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ABSTRACT

This manual provides an overview of sexual harassment and what can be done about it. Although it deals with laws in California, its general sections and sections of federal laws could be used by persons in any state. The guide contains 12 chapters. Chapter 1 includes a discussion of what sexual harassment is and how it affects society and the individual. Chapters 2 through 11 discuss in detail the various options available to deal with the sexual harassment experience. They include information on the advantages and disadvantages of these options and what may be expected in the pursuit of a particular course of action. These chapters discuss documenting the experience, which is critical regardless of which avenue is pursued, remedies, the use of the criminal justice system, the employment complaint system, the military service complaint system, and the prison complaint system. The final chapter includes a discussion of various miscellaneous issues including personal and community strategies to assist in preventing sexual harassment, using expert witnesses, using the media, referral systems, educational workshops and training programs, prevention strategies, and working with men to eliminate the problem. The manual concludes with a comprehensive bibliography and resource list and extensive appendixes containing sample forms from various complaint agencies and current federal and California law and regulations. (KC)

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HELP YOURSELF: A Manual for Dealing with Sexual Harassment

Sexual Harassment in Employment Project of the California Commission on the Status of Women

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HELP YOURSELF: A MANUAL FOR DEALING WITH SEXUAL HARASSMENT

Edited by

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Mary T. Lebrato, Ph.D., J.D.

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DEDICATION

Dedicated to the Spirit and Memory of Barb Landers, former Director, Project SEE, (Sex Equity in Education) California State Department of Education.

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FOREWORD

Many dedicated people have freely contributed long arduous hours to the development of this self-help manual. We hope that those of you who may experience or have experienced sexual harassment will find the information in this manual helpful in the resolution of that experience.

I remember the frustration that I personally felt beginning in January 1979 when I realized that I had been in the wrong place at the wrong time and that my economic and emotional well-being were severely threatened because I had been forced to choose between my sexual integrity and my job security. No one person or agency was able to provide information on what my options were. How was I to choose a solution to my problem? How was I to plan the journey back to some kind of order and stability in both my work and my personal life? Who could help me? Who should I ask? Where should I go? What should I do? So many questions. So many doubts. And such depression.

Well, seven years later, I am a little less naive, better informed, and convinced that we are our own best advocates. Working on the problem of sexual harassment has enabled me to personally resolve my experience in a positive growth-producing way. I have come to realize that it is not best to advise people experiencing sexual harassment to file a complaint. And it is not best to advise them not to file a complaint. Each of us must choose the path back to personal power. Each of us must attempt to evaluate her/his life situation, her/his personal and economic resources, her/his job situation, her/his strengths. Weighing all these factors against available options should shed light on some kind of direction we personally are comfortable in taking.

For some of us, filing a complaint is the first step in the journey. For others, taking a self-defense class will enable us to regain a sense of our personal power. Some may want to work with their employer or organization to develop prevention policies and procedures. Others may decide to get involved in changing the law or in doing peer counseling to help others who experience sexual harassment. Still others may decide to change jobs and start fresh, leaving the past behind.

Whatever the choice, being informed about our options is essential in making decisions which, instead of leading to further depression and despair, can lead to feeling alive, renewed and well again. We can use the stresses of a sexual harassment experience to promote our own personal growth.

It is in this spirit that this manual was written. We hope that it is in this spirit that the manual will be used.

I wish to extend my personal best to each of you in your struggle, and sincere appreciation to each of you contributors and editors. My special thanks to Pamela Faust, Lori Hara, Marian Johnston, Kathy Kinser, Kathy Mikkelson, Gail Morton, Lorraine Atkins-Parnell, Marilyn Pearman, Betsy Solstadt, Anne Stausboll, Shirley Yuen, and to my best friends Jean Faenza and Petey Millner who put up with me during my own crisis. In addition, I would like to extend my sincere appreciation to the Commissioners and staff of the California Commission on the Status of Women (CCSW) during the two year tenure of the Sexual Harassment In Employment (SHE) Project (commencing December 1982). In particular, the leadership provided by Hannah Beth Jackson and Dorothy Jonas, former CCSW chairpersons, was instrumental in the achievement of the Project's successes. Thank you also to Wilmer (Will) Horst (now retired) for his generous and patient assistance in the printing of this manual and for making it too a learning experience. Finally, my deepest gratitude to Christiann L. Klein who generously and patiently contributed many hours of consulting, editing and writing and without whose assistance this endeavor would not have come to fruition.

Sacramento, California Mary T. Lebrato, Ph.D., J.D.
September 27, 1986 Editor and Contributor

EDITOR'S INTRODUCTION

Sexual harassment can be a devastating experience. It is a severe invasion of our lives perpetrated without our consent and often seemingly beyond our control. We can, however, effectively deal with it and sometimes even prevent it. This manual was written to define sexual harassment and to suggest informal and formal mechanisms and strategies to help deal effectively with it.

Through self-help many women have been able to cope successfully with a sexual harassment experience. Those who maintain control over directing the resolution of the problem are not only more likely to achieve a satisfactory solution but also to feel better about themselves and the outcome.

Since sexual harassment is only emerging as a public issue (although it has existed as a problem probably as long as there has been a male-female power imbalance in society) there is little written information available for those who experience it. Popular media information is available but it is limited. Surveys have documented the fact that sexual harassment is a problem. Some information has been published on what to do if it happens and what the law is in the area (at least with respect to work and school). Finally, material to help employers avoid legal liability is readily available. However, this information is insufficient to help us make an informed decision regarding personal prevention strategies or how to best survive the experience.

Often, we are directed to various agencies and told to file complaints with them. The agencies do not tell us of all our options or the advantages and disadvantages of filing complaints with them. Nor do they counsel us on what might be the best option for us given our own particular resources or circumstances. They do not tell us how it (either the experience or filing the complaint) will affect our lives, or what it will cost us (emotionally and financially), nor do they necessarily inform us about what options are available outside of their agency's jurisdiction. It is my intent to try and fill the gap by providing you with information in one sourcebook.

Some of us naively believe, as I did when I first experienced sexual harassment on the job, that all we have to do is inform the appropriate agency about what happened to us and they will take care of it. Unfortunately, it does not work that way, no matter how much we might want it to. At all phases of the process, from prevention to complaint outcome, we are our own best advocates. Too often we are our only advocates since there are few agencies funded to help resolve sexual harassment experiences or, for that matter, any discrimination problem. Only we can possibly know what we want or need to resolve the experience.

Because sexual harassment primarily affects women, examples given will refer to women. However, the principles and options available also apply where men experience sexual harassment. Hopefully this manual will help us decide what is best for us, and whether that is to remove ourselves from the situation or to file a lawsuit. It is designed to give an overview of the problem and what can be done about it.

Chapter one includes a discussion of what sexual harassment is and how it affects us. It is first important to determine if we have been sexually harassed. We must recognize that the legal definition is somewhat narrow and even if our experience does not meet the legal criteria we may still have been violated and will still need to resolve that problem for ourselves. It is also important to recognize how we are affected by the experience so that we are able to seek help if, for example, we are experiencing stress-related symptoms, or are having difficulty with personal relationships. Many of these reactions are normal and if we are aware of that we can more effectively cope with them.

Chapters two through eleven discuss in detail the various options available to deal with the sexual harassment experience. They include information on the advantages and disadvantages of these options and what may be expected in the pursuit of a particular course of action. The chapters start with a section on documentating the experience, which is critical regardless of which avenue is pursued, and end with an overview of remedies and a discussion of the use of the criminal justice system.

The final chapter (twelve) includes a discussion of various miscellaneous issues including personal and community strategies to assist in preventing sexual harassment, using expert witnesses, using the media, referral systems, educational workshops and training programs, prevention strategies, and working with men to eliminate the problem.

The manual concludes with a comprehensive bibliography and resource list and appendices containing sample forms from various complaint agencies and current federal and California law and regulations.

The beginning of the manual includes a list of contributors and editors. The editor has been able to secure the talents of many experts on the issue of sexual harassment to provide the most up-to-date and accurate information possible. Each of the contributors has had experience with sexual harassment from the perspective of those who have been subjected to sexual harassment. The contributors all share a commitment to helping women help themselves.

It is essential that you verify the information and processes described before proceeding with a particular option because filing deadlines change, processes change, laws change, policies change, etc., and some of the information provided by the various experts may become outdated. Again, the key to your success will be helping yourself and being your own best advocate. That includes making sure you are as well informed as possible. **Do not ever fully depend on what someone tells you. Confirm it for yourself.**

Do not be discouraged by the size and volume of information contained herein. Repetitions occur in some places because many aspects of the issue overlap. Some sections are lengthy because the information contained in them is not available elsewhere and a comprehensive discussion of the area is essential. Where possible, sections are designed to stand alone. This should allow a selection of sections of particular interest and enable the reproduction of appropriate sections for use in responding to questions or requests for information.

I would like to encourage the distribution of this manual, either in its entirety or in part. The real value in this work is the assistance it can provide to those wishing to resolve a personal experience with sexual harassment and to those who are seeking changes within organizations and society. To be useful, it must be distributed and used. Please credit the Sexual Harassment in Employment Project if you reproduce any of the material. However, the manual does have a protective copyright and may not be reproduced for commercial purposes, without express written consent of the editor.

Remember that this manual was designed to provide you with accurate, authoritative and comprehensive information on the subject of sexual harassment. It is *not* designed to provide legal advice or in any way to substitute for the services of legal counsel. The reader is advised to consult an attorney before proceeding with any legal matter in the formal resolution of a sexual harassment problem.

Finally, please note that this manual uses examples which refer to the names of persons, businesses, etc., for illustrative purposes only. Such references are fictional and are not intended to portray real individuals or organizations. Any resemblance to real persons or institutions, etc., is purely coincidental.

Chapter 1

WHAT IS SEXUAL HARASSMENT?

Definitions of Sexual Harassment

Sexual harassment is unwanted sexual attention. This attention can be verbal, visual, or physical and can range from a sexist remark to sexual assault. The harasser's intention is irrelevant; the victim's perception of the situation as wanted or unwanted determines whether or not it is sexual harassment. Sexual harassment can be characterized as generalized hostility toward women.

Women can be harassed by anyone. Women can be harassed anywhere and at any time. While harassment is a common and shared experience for women, it does not affect each of us in the same way. A woman's job, race, class background, age, disability, sexual orientation and political views all influence the form of harassment she receives and its impact on her.

Often particular groups of women are chosen as targets of harassment because of their economic, political or social vulnerability, all of which make it more unlikely that these women will publicly resist or report the harassment. Among these groups are: women of color, single mothers, working-class women, older women, disabled women, lesbians and feminists. Loss of income or status, forced relocation, or physical abuse occur most frequently to the least privileged women.

See Table 1 for some commonly cited definitions of sexual harassment.

Kinds of Sexual Harassment

There are many kinds of sexual harassment, including verbal, visual, gestural and physical conduct. Sexual harassment includes sexist depictions, remarks, innuendoes, propositions, and subtle or coercive pressure for sexual activity. Physical forms including touching, patting, pinching, brushing against a woman's body, and physical and sexual assault.

If you feel uncomfortable during an interaction, you may be dealing with sexual harassment. If you find yourself feeling angry or embarassed, or want to avoid the harasser or the situation, you probably are experiencing sexual harassment.

Examples of Sexual Harassment Cases

The following factual summaries present some real life examples of sexual harassment:

- In a suit against Continental Can Company, brought by a production worker, the Minnesota Supreme Court found the company liable because it ignored the worker's complaints of verbal sexual advances and sexually derogatory remarks from her fellow employees. Her supervisor at the all-male plant in Eagan, Minnesota told her there was nothing he could do and that she had to expect such behavior when working with men. The Minnesota court disagreed, finding that the worker had produced evidence to support her accusations that her co-workers engaged in a range of sexual harassment, from verbal to physical.
- In a suit charging sex discrimination brought by an engineer at Western Electric in New Jersey, the U.S. District Court decided in her favor, and 2,000 other female employees then filed claims for individual damages. The company had filed an appeal, but, facing the need to try each of the 2,000 other women's claims individually, it settled the case for $7 million and waived its right to appeal. Kyriazi, the engineer who filed suit, was awarded damages of $105,000. The court earlier awarded her an extra sum of $1,500 from each of three male co-workers who had circulated cartoons of her, speculated loudly on her virginity, and otherwise harassed her. The court specified that the three men's damages were to come from their own earnings and not from the company (personal liability).
- Charges of sexual harassment resulted in the Florida legislature voting to reprimand one of its members for the first time in the state's history. A state representative was accused of sexual harassment by two former legislative aides. The state appointed a select committee to probe the charges after the aides filed a complaint with a federal agency. The committee took depositions from members of the representative's staff and reported that the evidence supported the charges. The House followed the recommendation of its Ethics Chairman and voted for reprimand 109-4, with two of the four who voted against it saying they wanted a harsher measure taken.
- A final example involved a charge of sexual harassment on the USS Norton. A petty officer was found guilty in a court martial of assaulting female crew members, indecently exposing himself, using obscene language, and rubbing up against a woman in the pay line. Possible penalties included six months' confinement, loss of pay, or a bad-conduct discharge. The prosecutor argued that the officer's actions interfered with the women's ability to pursue their Navy careers without harassment, since harassment is not an acceptable part of the Navy environment and unreasonably interferes with the work environment.

TABLE 1

SOME COMMONLY CITED DEFINITIONS OF SEXUAL HARASSMENT

All people have the right to live, work and study in an environment free of violations of sexuality, personal privacy, and human dignity. Sexual harassment is unwanted attention directed at women. This attention can be manifested both verbally and physically and can range from a sexist remark to rape. The harasser's intention is irrelevant; the woman's perception of the situation determines whether or not it's sexual harassment. At its root, sexual harassment is generalized hostility towards women.

Source: Women Organized Against Sexual Harassment

Sexual harassment is best described as unsolicited nonreciprocal male behavior that asserts a woman's sex role over her function as a worker. It can be any or all of the following: staring at, commenting upon, or touching a woman's body; requests for acquiescence in sexual behavior; repeated nonreciprocated propositions for dates; demands for sexual intercourse; and rape.

Source: Lin Farley, Sexual Shakedown

Sexual harassment is sexual attention imposed on someone who is not in a position to refuse it.

Source: Catherine MacKinnon, Sexual Harassment of Working Women

Sexual harassment is defined as:

1. Influencing, offering to influence, or threatening the career, pay, or job of another person in exchange for sexual favors; or
2. Deliberate or repeated offensive comments, gestures, or physical contact of a sexual nature in a work or work-related environment.

Source: Department of the Navy, Office of the Secretary

Specifically, sexual harassment is deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome.

Within the Federal Government, a supervisor who uses implicit or explicit coercive sexual behavior to control, influence, or affect the career, salary, or job of an employee of an agency, who behaves in this manner in the process of conducting agency business, is engaging in sexual harassment.

Finally, any employee who participates in deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which is unwelcome and interferes in work productivity is also engaging in sexual harassment.

Source: Alan K. Campbell, Director, Office of Personnel Management

Sexual harassment consists of verbal or physical conduct of a sexual nature, imposed on the basis of sex, by an employee or agent of a recipient that denies, limits, provides different, or conditions the provision of aid, benefits, services or treatment protected under Title IX.

Source: The U.S. Department of Education

§527.6 . . . "harassment" is a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys or harasses the person, and which serves no legitimate purpose . . . would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress . . .

Source: California Code of Civil Procedure

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Source: Equal Employment Opportunity Commission Guidelines on Sex Discrimination

§ 7286.7b (1) Harassment includes but is not limited to:

(A) Verbal harassment, e.g., epithets, derogatory comments or slurs on a basis enumerated in the Act;

(B) Physical harassment, e.g., assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual on a basis enumerated in the Act;

(C) Visual forms of harassment, e.g., derogatory posters, cartoons or drawings on a basis enumerated in the Act; or

(D) Sexual favors, e.g., unwanted sexual advances which condition an employment benefit upon an exchange of sexual favors . . .

Source: California Fair Employment and Housing Commission Regulations (California Administrative Code)

§ 212.5 For purposes of this chapter, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

(a) Submission to, or rejection of, the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.

(b) Submission to, or rejection of, the conduct by the individual is used as the basis for employment or academic decisions affecting the individual.

(c) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance or of creating an intimidating, hostile, or offensive work or educational environment.

(d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

Source: California Education Code

Sexual Harassment From a Male Perspective

Editor's Note: This section, used with the permission of and written by Stephen Anderson-Davis, a professional trainer, uses scenarios from the TV series MASH to illustrate the tension between male and female perceptions and gender expectations. Men and women view sexual harassment differently. Mr. Anderson-Davis presents his opinions as to male views of situations which may result in unwanted sexual conduct in order to help us understand a common male perspective.

* * * * * *

"M*A*S*H 4077 Unit Rocked by Charges of Sexual Harassment."

News bulletin . . . "Dr. Pierce is being charged with sexual harassment by Major Hulahan. Col. Potter, Unit Commander, is also named because he allegedly knew of the sexual harassment but allegedly did nothing to stop it."

Alan Alda, alias "Hawkeye" Pierce, the liberated sensitive male of the 80's a sexual harasser?! Yes. Because, he has made numerous unwelcome sexual comments and innuendoes to women, usually nurses. Also, he has made repeated unwelcome sexual advances toward some women. Sexual harassment is defined as unwelcome sexual advances, comments, jokes, innuendoes, looks, gestures and visuals.

This section presents a view of why men sexually harass women. It does not imply that most men are sexual harassers and does not justify the sexual harassment. Nor are all of the reasons that men sexually harass women identified.

Men and women usually agree that requiring a person to go to bed with you to get or keep a job is sexual harassment. But frequently there is a disagreement between men and women about what other behaviors constitute sexual harassment, and how often they occur. It is not productive in understanding why sexual harassment occurs to say that all men are potential sexual harassers or that they are all insensitive, just as it is not productive to say that all women ask to be sexually harassed because of their clothes or that they are all oversensitive. This male/female perception gap about what is sexual harassment and how often it occurs can be reduced. It is first necessary to understand the impact of society's gender role expectations on us. Then, we must look at our own attitudes and behaviors toward men and women and change any which cause or perpetuate sexual harassment.

A good place to start in the above illustration is with Hawkeye's behavior. His sexual comments, innuendoes or advances are never portrayed as seriously offensive even when they are unwelcome. Instead, when the recipient of his behavior doesn't like his behavior he often makes another joke and eventually wins her over. Or, as is often the case with Margaret, she is made to look foolish if she objects to his behavior. Hawkeye's character, therefore, gives the impression that his sexually harassing behavior is: (1) harmless; (2) really welcomed by women; and (3) an appropriate way to work with women. Further, if you don't like his behavior something is wrong with you or you don't have a sense of humor.

Regardless of what the exact behaviors are, sexual harassment is serious to its recipients. To illustrate why men sexually harass women, sexual harassment scenarios will be presented based on a categorization of sexual harassment into less serious and more serious categories, and based on traditional gender role expectations. Please note that the gender role examples used are based on "traditional" male and female expectations and behaviors as follows:

Gender Role Expectations:

A MAN must be: competitive; aggressive; the initiator of social and sexual interactions with women; responsible for the personal safety of "his" woman and children. He must have all the answers; not show fear; be emotionally stable; keep insecurities to himself; be strong; be self-assured and financially successful; "have" many women sexually; and do "men's" work.

A WOMAN must: be a good mother and homemaker; be polite; pretty; neat; smell nice; be sensitive and intuitive; be supportive of "her" man; and put her needs after those of "her" man and children. She must not raise her voice or use profanity; she must smile; be passive; not be sexually permissive; be dependent on men to protect and provide for her; and do women's work.

Categories of Sexual Harassment:

LESS SERIOUS SEXUAL HARASSMENT (i.e., sexual comments, innuendoes, jokes, touching other than sexual areas of the body, repeated requests for dates, oogling, sexually suggestive visuals, and body space encroachments.)

The following scenarios involving the less serious sexually harassing behaviors are based on traditional male and female roles and social interactions and they partially explain why men sexually harass women.

- **"Boys, If You Don't Ask Us, We Can't Dance" Scenario.**

(The title of a country and western song.) A man wants to dance with a woman. He knows that he is supposed to ask her because it's very unlikely that she will ask him. He may select a woman who is standing by the exit or bathroom. In case she won't dance with him, he can pretend that that is where he was going in the first place. She doesn't want to

dance with him but instead of saying no, she will say, I'd like to but, "my feet are tired," "I'm waiting for my girlfriend," "the song is too slow or too fast," or, she goes to the bathroom when she sees him coming toward her. In the workplace, when this interaction occurs, it may be sexual harassment. He sees a woman that he'd like to go out with and asks her. She doesn't want to go out with him. Instead of telling him that, she makes excuses for not being able to spend time with him, i.e., "working late, doing laundry, my family is in town, or I'm playing racquetball." He thinks that she wants to go out with him but is busy. He persists in asking her out. She feels harassed. She complains to her supervisor. When he is confronted by the supervisor he is surprised and angry. He feels falsely accused because she never said no. If she says no, does that stop him from asking her out?

- **". . . Her Lips Said No, But Her Eyes Say Yes. Yes. Yes." Scenario.**

(Song lyrics.) These song lyrics tell us that women give conflicting messages and that they like a male who is persistent. When Rhett Butler carries Scarlett O'Hara up the staircase in "Gone With the Wind" she tells him to put her down as she pounds his chest. He ignores her. The next morning we see her in bed smiling. In the movie, "Mr. Mom" after Teri Garr has punched Martin Mull in the nose because he won't leave her alone he responds with, "You're cute when you get angry." The fact that our society gives many conflicting messages about what women mean when they say "no" makes it difficult for women to be taken seriously when they say no.

Men are taught to be persistent. In business, they are not to take no for an answer. Men usually don't have a parental figure talk with them in their teenage years about how girls only want one thing. Women are told this about men. Men are also not told to say no because she won't respect you if you say yes. Women usually receive that warning about men. Further, women may want attention but are conditioned to believe that a "lady" doesn't feel or act that way. She may tell him no, but the internal conflict between what she feels and what she is taught is proper may lead her to give nonverbal yes messages.

Further, if a woman is taught not to cause conflict she may have difficulty being verbally direct. Therefore, she may say, "If it's not too much trouble would you not touch me so often, ok?" Instead of, "Take your hand off of my leg." She also may not know how to have her nonverbal behavior agree with her statement. She may say, "take your hand off of my leg," but with no eye contact, a smile on her face, and a soft voice. The man may continue his behavior since he doesn't think that she is serious about what she is saying.

Some women don't think a man is really interested in them if he isn't persistent. "Half of the fun is the chase." Dustin Hoffman pursued Katherine Ross through half of "The Graduate" until at the end of the movie he takes her out of the arms of another man she's about to wed. His persistence proved to her that he really loved her.

When a woman is being sexually harassed and tells the man to stop and he continues, is he being malicious? He may continue because he's not going to let a woman tell him no! Or, he may continue because he doesn't believe that she means no. He thinks that she is playing hard to get.

- **"I'm A Girl Watcher" Scenario.**

(Song title.) Do women dress to attract sexual attention or to be attractive? Many men perceive that women dress to receive sexual attention and that women like and expect men to comment on how they look. This male perception about how women like to be treated contrasts sharply with how most women actually like to be treated. This perception gap can manifest itself as sexual harassment.

A "composite commercial woman" walks by a man. She has her hair flowing behind her. She uses L'oreal because she's worth a few pennies more. She has eye shadow, lip gloss, and blush on. She's wearing a cross-your-heart bra or no bra at all. She's wearing Jordache jeans "painted" on her hips. The question of the day is, "does she or doesn't she wear underwear?" because she's wearing Underalls. She's drinking a "now-you-see-it-now-you-don't" Diet Pepsi. The man remembers seeing movies or commercials where, whenever a woman receives a compliment from a man, she will smile or give a knowing look of encouragement. He may look her up and down, smile, and say "You're looking sexy today." Her response is irritation, "buzz-off!" or to complain of sexual harassment. He feels like someone changed the rules and forgot to tell him. Most of his information about why women dress the way that they do tells him that his behavior toward the woman was appropriate or even expected. He's confused.

- **Drive-in Scenario.**

A man asks a woman if she would like to go to the drive-in with him. She has to figure out if he wants to watch the movie or if he expects to "do something else." She makes her decision and says, "Yes." He now has to figure out if that means that she is expecting to watch the movie or to "do something else." They go to the drive-in. He feels that if he doesn't initiate some sexual come-on with her she may think that he doesn't think that she is attractive, or, that something is wrong with him. He bides his time, then does his "yawn-stretch-drop" move on her. She pulls away from him and says angrily, "What type of woman do you think I am? You men are all alike, you only think of one thing!" His response, "What did you

come here for then? You women are all alike, big teases!" They both feel justified with their anger. The problem was that they had different expectations and hadn't discussed them. In the workplace this expectation difference may cause sexual harassment to occur. During a business trip he asks her to discuss the day's work over dinner. She treats it as business while he starts discussing personal matters and his interest in her. He thinks that because she agreed to have dinner with him that she is subtly indicating personal interest in him.

Resolutions

The majority of the sexually harassing behaviors that occur because of one or more of the above scenarios may be resolved informally. Men are taught to monitor women's nonverbal cues which include how they dress, talk, walk, sit, hold a cigarette, hold eye contact, smile, etc. The above scenarios illustrate how those cues can be misinterpreted. A man's sexually harassing behavior can frequently be stopped when the woman clearly tells him that what he is doing is not ok. If that doesn't work, she may inform the supervisor or use the employer's informal complaint process.

MORE SERIOUS SEXUAL HARASSMENT (i.e., touching sexual areas of the body, sexual assault, making sexual touching or intercourse a condition of employment or employment decisions, intimidation, and trying to force the woman or women off the job.)

- **Cognitive Dissonance Scenario**

Men are taught that if a woman can beat them they are less than men. You insult boys and men by calling them sissies or saying that they "throw like a girl." If a man's masculine identity is strongly wrapped up in his job he may be threatened by a woman who can do the job as well as, or better than he can. He now feels a conflict between what he was told is true—that men are better—and what he is seeing—a woman who works better than he does. A blatant example of cognitive dissonance: a person who smokes a couple of packs of cigarettes a day hears how bad smoking is. To resolve the conflict between what he does and what he is told, that person will either give up smoking or rationalize that the research is biased, because after all, he has a 97 year old granddaddy who's been smoking since he was 14. In the workplace, the male worker will resolve the conflict by either accepting the woman and giving up feeling a threat to his masculine identity or he will try to sexually harass her until she leaves the job. If he does harass her and she leaves the job, that reinforces his perception that women cannot do that type of work. He will not acknowledge that he was threatened by her presence and was instrumental in forcing her out of the job.

$$$$$ Scenario

The male feels pressure to be the provider for his family. He feels society, and especially women, judge him based on how much money he makes. A woman in a traditionally male workplace creates "competition for the limited number of jobs." If he can harass her until she leaves the job he reduces the competition.

- **Women-Hater Scenario**

The male has a love-hate relationship with women. He likes sex but hates the power that women have to control how much sex he may have. So he may use his physical or positional power to get sex, sexually assault women, intimidate, embarrass and/or to harass women until they leave the job.

- **Casting Couch Scenario**

A man believes the Hollywood stories, television programs, movies and books that show other women are willing to trade their bodies for just about anything. He sees nothing wrong then with offering a woman a job or a promotion if she'll have sex with him. After all, that is what everyone else does.

- **PERK Scenario**

A man views women as the "extras" and his "rewards" for achieving his high position of power. Therefore, he sees nothing wrong with his demands for sex or with how he chooses to treat the women around him.

- **Power Scenario**

A man craves feeling powerful and so will sexually harass any woman that he perceives to be more vulnerable, i.e., a woman with a green card, an illegal alien, a single parent, a woman of color, a woman on probation from jail, a temporary employee, a woman on work probation or any woman who he thinks will not complain about his sexually harassing behavior.

These sexually harassing behaviors are seldom resolved by personally confronting the sexual harasser. The recipient must document the situation as thoroughly as possible, keep any evidence, gather witnesses, talk with management, and use the complaint process of the employer and/or union to resolve her situation. If unsuccessful, she should then contact local resource agencies.

In summary, sexual harassment, in any form, is serious. The multitude of sexually harassing behaviors include less serious subtle forms of behavior. Men frequently are unaware that these behaviors are unwelcome because they think that is how women expect and like to be treated. Also, they have always treated women that way. And, the woman may not tell him that his behavior is unwelcome, or, if she does, he doesn't take her seriously. Women who are recipients of subtly sexually harassing behaviors can

usually stop the harassment by talking with their harassers. Women who are recipients of serious sexual harassment may have to use more direct or formal processes to stop the harassment.

Sexual harassment can be prevented and stopped when people understand why it occurs and, what it is, and can monitor their own behavior. It also requires that each of us have the courage to treat people fairly and in a nonsexist way.

* * * * * * *

Where Does Sexual Harassment Occur?

At Work

Sexual harassment in the work environment is a violation of civil rights. It may be manifested as discrimination in wages, promotions, discharge, overtime assignments, etc., as well as a hostile or "polluted" work environment. Any behavior of a sexual nature in the workplace that is unwanted and affects your job is probably sexual harassment. As noted above this may include verbal or written comments, pressure for sexual relations, patting, touching, leering, off-color jokes, physical assault and rape.

In the context of employment, sexual harassment becomes coercive because of the unequal power structure between men and women. The harasser often has the power to affect a person's economic well-being. If a woman is harassed by someone in a position of authority over her, she often cannot simply walk away or say "No," for fear of retaliation. When her economic well-being is threatened, her alternatives for action are severely limited.

Sometimes harassment is so persistent that the working conditions become intolerable. Often in such cases, the easiest way to stop the harassment is to quit the job. This is one of the most frequent reactions to the problem.

In Housing Accommodations

Sexual harassment in housing accommodations can be similar to harassment at the workplace when a landlord creates a hostile or offensive environment by unwanted sexual attention directed at a tenant.

Offending landlords, owners or managers hold tenants in as vulnerable a position as employers because they can force eviction or departure of the tenant. Generally, these parties can be dealt with in the same manner as they are for employment-related harassment.

In Education

Sexual harassment is prevalent in any setting when a man is in a position of authority over a woman and has the power to affect the woman's job, career or grades. In education it is the power to change a grade or give a poor recommendation for employment that makes sexual harassment so coercive. To refuse the sexual demands of a professor may mean jeopardizing your grades, career and future.

Sexual harassment can make the educational atmosphere intolerable, often driving students out of certain classes and courses of study. Some students who refuse to comply with the harasser's demands are faced with undeserved low grades and choose to withdraw from school. This type of coercion has the potential to affect the student's career choice and life plans.

In The Community

In the course of daily life, all women are exposed to sexual harassment. There are many documented cases of women being harassed by strangers, ex-boyfriends, landlords, and neighbors, etc. A well-known case involving a stranger was John Hinckley's harassment of actress Jodi Foster.

Another example of sexual harassment in the community began in June 1978. For over a year, a woman in Berkeley, California was harassed by a man who lived in her apartment building. The harassment included phone calls, notes, following her wherever she went, and interrogating friends and employers. This type of behavior has been referred to as "psychological rape" and leaves the woman in a constant state of fear. The attention is unwanted, yet there is no escape. Such harassers are obsessive and the harassment usually continues until the woman is forced to move from the area and leave the harasser behind. However, the harasser may still follow and the woman may even refrain from registering to vote in her new location because the harasser will be able to track her through that process.

In California there are some laws against this kind of harassment, but harassment in this context is very difficult to prove. Police can assist in such cases and restraining orders can help (see Chapter VIII), but it is extremely difficult for our legal system to really prevent or even remedy such behavior. Each individual must also confront this type of sexual harassment by seeking strong and consistent support from friends and family. Hopefully through education over time we can eliminate the power imbalance between men and women that creates a climate in which such behavior can exist.

In The Military

The military services basically adhere to the same definition of sexual harassment as the federal Equal Employment Opportunity Commission (EEOC). According to the Secretary of the Army, John O. Marsh, Jr., in May 1981:

Sexual harassment is defined as (1) influencing, offering to influence, or threatening the career, pay, or job of another person—woman or man—in exchange for sexual favors; or (2) deliberate or repeated offensive comments, gestures or physical contact of a sexual nature in a work or duty-related environment.

In military life, sexual harassment is not limited to the work environment and can occur at almost any place since the military person is always essentially on duty, at work or on call, 24 hours a day.

In Prison

Sexual harassment of female inmates by male guards is pervasive in the American prison system. The imbalance of power between men and women, there guard and prisoner, combined with the fact that women cannot leave the prison, encourages and allows the abuse to exist. Indeed, many accounts of prisoners during the 1800's mention illegitimate births during incarceration and the sexual abuse of women as the impetus for implementing segregated prison facilities.

California Penal Code section 4021 prohibits body and strip searches of females in county jails unless an employee of the same sex as the inmate is present. There is also a substantial possibility of liability under 42 U.S.C. 1983 (in addition to a penal sanction), where the sheriff/police conduct a "visual" (as opposed to a probing body cavity search) strip search on a minor traffic offender without reason to believe that he/she is carrying contraband or a weapon. The 9th Circuit Court of Appeals recently (03/03/86) reversed a grant of summary judgment against a plaintiff in favor of the San Diego County Sheriff where such a search had been conducted pursuant to "policy" upon booking of the plaintiff for a refusal to sign a traffic citation. See *Ward* v. *County of San Diego, et al.* (9th Cir. 1986) ___ F.2d ___ (86 Daily Journal D.A.R. 793). The California Attorney General's office has taken the position that not allowing female guards to guard male prisoners and vice versa denies the guards their rights to freedom from employment discrimination (i.e., differential treatment on the basis of sex), even if this means guards are viewing prisoners of the opposite sex in the nude. The courts have agreed with the Attorney General's position. It appears then in California that searches or views of nude prisoners themselves are not legally sexual harassment. The courts have found that measures can be taken to protect inmate privacy. For example, window covers may be employed for short intervals while prisoners dress or use toilet facilities, and sleepwear may be issued. Recently 42 U.S.C. 1983 declaratory and injunctive relief was denied to petitioning prisoners (male) of San Quentin over the Department of Corrections' use of female guards to conduct monitoring of showering, toileting, and visual strip searches. See *Grummett* v. *Rushen* (9th Cir. 1985) 779 F.2d 491. (The court did not even require the use of curtains or other obscuring devices. The court held that women's rights to employment prevail over privacy rights of prisoners.

Women prisoners are also victims of sexual abuse and rape. They may engage in sexual relations with the guards in exchange for psychological and physical freedoms: such relations are coercive.

Official documentation and reporting of sexual harassment and abuse in prison is deceptively low for many reasons. Women often do not see the point in challenging the conditions of confinement because they are so similar to oppressions they faced in the outside world. Indeed, until recently, sexual harassment, even outside the prison, went unnoticed. Further, a prisoner may believe that if she reports sexual abuse, the prison administration will blame the prisoner or deny the accusation. The prisoner may also believe that the administration is unlikely to take affirmative action to remedy the situation.

Women prisoners as a class have received little attention, and there has been virtually no litigation on their behalf. Most prison litigation is on behalf of male prisoners. This is because historically women have comprised only 4–5 percent of the prison population and because it is difficult for them to gain access to the courts due to a lack of available legal services within the women's prisons. There also exist formidable pressures within prisons to maintain the status quo: prisoners often fear for their safety should they level charges against the prison or the guards. Consequently, women prisoners rarely report abuses and generally do not bring lawsuits to protest grievances.

Extent—Some Facts About Sexual Harassment: Research Results

- Women, more often than men, are victims of sexual harassment. Most studies show that about half of all working women have been sexually harassed at some time.
- About one-third of the women who have been harassed have suffered some consequences as a result of the harassment such as being fired, quitting a job or being transferred.
- Less than 1 percent of men have experienced an actual negative effect from harassment. While men report that they frequently receive sexual overtures from women they often do not view these overtures as unwanted. Thus, although men generally report a lot of sexual activity at work, they report almost no sexual harassment.
- About half of all harassers are supervisors; the others are customers, clients, co-workers and occasionally subordinates.
- Men who are sexual harassers frequently harass more than one woman.
- Workers expect higher standards of conduct from supervisors than from other workers. Workers expect supervisors to avoid any situation or comment that could be construed as a threat or an overture.
- Sexual harassment is more likely to occur in some work places than in others. Harassment is especially likely in work places in which there are few women workers and those in which swearing and sexual joking are common, such as in non-traditional job areas like the trades and crafts.
- Many victims of harassment feel that their employer will not back them in their complaints. They

feel that they have little recourse except to quit their jobs.

- Many people do not know whether their organization has a procedure for handling complaints of sexual harassment because the establishment of such procedures is not uniform. Many large organizations now have policies and procedures; other organizations do not.
- Women who are unmarried (single, divorced, or living with a man) are more likely to be harassed than women who are married or widowed.
- Woman of all ages, occupations, income levels, and ethnic backgrounds are harassed.
- Homosexual sexual harassment is much less frequent than heterosexual sexual harassment.
- Only a minority of women (about 16 percent) are flattered by sexual overtures, propositions, and innuendoes from men at work.
- A minority of people think that sexual harassment is part of normal male-female relations.
- There is little evidence to suggest that dispensing sexual favors is an effective or typical way of advancing in an organization.

There is still a serious lack of information about sexual harassment. With an increasing number of women demanding equality in their lives it is important to examine the ways men and women interact. It is an unfortunate but very real fact that sexual harassment has often become a standard part of this interaction. The ramifications of sexual harrassment must be addressed more thoroughly in the research community.

Effects of Sexual Harassment on the Individual

Sexual harassment effectively keeps women "in their place" in the workforce. It reduces motivation, self-esteem and self-confidence, which in turn reduces the chance for career advancement.

Sexual harassment has been shown to keep women underpaid, underemployed, and unemployed both directly and indirectly. Sexual harassment denies women the opportunity to work and routinely advance based on job skills and experience. Dismissals and denials of promotions occur for reasons that are not job-related (the refusal to submit to sexual advances). It is not uncommon to receive unfair work evaluations and references, which damage chances for new and better jobs.

Even when not directly denied jobs or advancement, the ability to work productively is diminished by the strain of the harassment. Valuable time and energy must be spent appeasing and fending off harassers, rather than concentrating on work.

Self-confidence is shaken and emotional and physical health can be impaired by the stress of sexual harassment. This often results in increased absenteeism and medical costs to treat the physical and mental stresses. Those who are not willing or able to tolerate the harassment and related stresses have to quit and risk not being able to find comparable work. Sexual harassment, in conjunction with other discriminatory conditions such as unequal pay, inadequate job training, and sex segregation of jobs, is a major force in maintaining the low status of all women in the workforce.

Confusion or fear are very common initial reactions. Women may find themselves doubting their own perceptions, worrying whether they are just being overly sensitive. A woman's initial reaction often is to ignore the unwanted sexual attention, hoping that the harasser will get the idea that she is not interested. Other women are too shocked to respond at all. The harasser frequently chooses to see these reactions as encouragement to continue the behavior or to engage in even more blatant harassment.

Sexual harassment affects the individual's whole life; not only work or school, but personal and family life may suffer. A loss of self-esteem may result from the powerlessness and confusion associated with the experience. The resulting stress can be exhausting and harmful. Anger turned inward may become depression; it may manifest itself in guilt and self-blame. These reactions, though common, are destructive and tend to reinforce the harmful effects of the harassment itself.

Continuous anxiety and/or internalized anger may cause physical symptoms as well. Headaches and stomach aches, or more serious problems such as ulcers, colitis, high blood pressure, or other illnesses may result.

Understanding the psychological effects of harassment is difficult because reactions are often masked or minimized. Women fear being blamed, ostracized or fired, and this prevents open discussion of their reactions to sexual harassment. At home and at work, women are encouraged to think about men's feelings first, and discouraged from recognizing their own.

When sexual harassment threatens one's economic livelihood, tolerating the harassment may seem the lesser of two evils. It may seem necessary to trade self-respect for economic livelihood since most workers need their jobs.

In addition, those who speak up risk losing the approval of family, friends, co-workers and others. "She asked for it," "she's lying," or "she's immoral," are common responses to claims of sexual harassment.

Work place harassment can result in questioning relationships with men in general. Feelings of betrayal are not uncommon. After a sexual harassment experience, women may no longer trust any men, even those who were previously trusted and highly regarded. There may be anger at the harasser, all men, management, or the system. The anger may be

minimized or not understood by those close to the woman, which makes it even more difficult to express it.

One of the most widespread and destructive reactions is guilt. Often accused of complicity, even those who understand their own powerlessness in the situation may worry that they have somehow caused the harassment.

Individuals respond to sexual harassment in a variety of ways—depending on the nature of the harassment, their particular defenses, and their emotional nature. The availability or lack of options as well as the reactions of significant others often determine how isolated, helpless, guilty, angry or frightened one feels.

Within the work setting, sexual harassment and the subsequent refusal to comply with the harasser's demands often result in further verbal abuse, noncooperation or retaliation from co-workers.

As with reactions to many kinds of threats, some are able to reach out for help and/or defuse the harasser, while others feel compelled to succumb to the sexual demands.

If one is prone to substance abuse, dealing with sexual harassment can be a severe test of the ability to remain "straight." In this case it is critical to ask for and accept help immediately.

The effects of sexual harassment are potentially devastating and all-encompassing. However, it is possible to fight back by recognizing and naming the effects of the harassment and by seeking needed support from family and friends or through formal counseling. By understanding the stress-related symptoms, it is easier to recognize potential problems and to plan solutions or to seek help.

Finally, it is essential to establish that the symptoms experienced are not based on other underlying physical or emotional problems. Therefore, see a doctor before proceeding on the assumption that symptoms are entirely stress-related.

Effects on the Organization

Sexual harassment is costly for the organization. In addition to expensive court costs, judgments and settlements, an environment that is sexually harassing saps the organization in other ways.

One federal government equal employment opportunity counselor estimates that just to process a complaint costs the employer about $50,000. This includes the work time the complainant uses to document the incident and the time the complainant spends talking with others to get witness statements, procedural information and support. In addition, the investigator must interview many people within the organization in order to establish the facts. Management response time also involves salary and other organizational expenses.

Other costs include increased use of vacation, sick leave, and health benefits; inattention to work performance and lowered productivity; job turnover and retraining. These costs are not only generated by the person experiencing sexual harassment but also by the harasser and other workers. Employee morale and productivity of co-workers also decrease.

The cost of sexual harassment to the federal government from May 1978 to May 1980 is conservatively estimated to have been $189 million (Merit Systems Protection Board, *Survey of Sexual Harassment in the Federal Workforce*, 1980). A total of 29,350 federal employees (2.5%), 24,660 women and 4,690 men left their jobs over the 2-year study period as a result of being sexually harassed. The cost to the federal government due to job turnover resulting from sexual harassment is estimated to have been $26.8 million.

It is estimated that the loss to the federal government due to increased use of health benefit plans for emotional and physical stress was $5 million. The approximate cost of work time lost due to sick leave and absenteeism was $8 million.

The loss to the federal government due to decreased productivity of complainants of sexual harassment was $72.1 million for the 2-year period. Finally, the loss to the federal government due to decreased productivity of employees who worked in close association with the complainants of sexual harassment is estimated to have been $76.9 million.

The reputation and esteem of organizations also may be damaged. For example, a manager in an organization that had received extensive newspaper coverage about a pending sexual harassment case attended a professional conference in Canada. He was introduced to a professional peer who said, "Oh, yes, you work for that organization that was in the newspapers for sexual harassment." This manager felt personally responsible for what had happened even though he was not involved. Further, he was embarrassed to mention his organizational affiliation again at the conference.

An organization's purpose is often blurred when sexual harassment occurs. It takes time and energy to deal with issues related to sexual harassment; this waste of valuable resources drains organizations and depletes their ability to be productive. Energies are devoted to denying or undoing problems of sexual harassment rather than to meeting organizational goals.

Often the organization will find it necessary to take costly actions to correct past sexual harassment practices. For example, organizations may hire consultants to train and/or advise the organizations about how to deal with a sexual harassment complaint. The cost of training employees adds up quickly, as does the cost of hiring an outside consultant to work with the organization.

Finally, it has been estimated by an insurance com-

pany offering sexual harassment litigation insurance that the *average* cost of a sexual harassment lawsuit is $50,000 with complainants winning large judgments (to date as large as $500,000) in over 40% of the cases.

Sexual harassment is bad business; an organization must prevent sexual harassment whenever possible and reduce or eliminate its existence if it has already occurred. Sexual harassment cannot be ignored; the cost in both human and financial terms is too high.

How Do People Respond to Sexual Harassment?

According to many studies, women are likely to respond indirectly to sexual harassment, with from 45 to 62 percent of surveyed women ignoring the harassment and 45 to 55 percent avoiding the harasser. The next most frequent response is to take direct action by asking or telling the harasser to stop.

In studies of women working in both the private and public sector in Fresno, it was found that many women (26 to 29 percent) tried indirectly to get the harasser to stop by making jokes, giggling or crying. The least common responses were complaining to the harasser's supervisor, filing formal complaints with outside agencies such as the Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH), asking to be transferred or going along with and encouraging the behavior. Like women, most male victims (65 percent) ignored the sexual harassment. Fewer men, though, avoided the offender or asked or told that person to stop.

Ironically, while indirect responses are most common, direct assertive responses are most effective. Only 28 percent of federal female employees who ignored the unwanted sexual attention reported that the harassment stopped. By far the least effective response was to go along with the behavior. Direct, assertive responses, such as telling the harasser to stop or reporting the behavior to a supervisor or other official were found to be effective by the majority of women who took these actions (the MSPB study found 54 percent and 53 percent, respectively). However, while a direct response worked well for many women, for some it worsened the situation. Clearly, no one response worked well for everyone. Men reported that it was most effective to ask or tell the person to stop, or to avoid the person.

Very few people chose to pursue formal remedies. In a survey of sexual harassment in Maryland state government, less than one-half percent of the sexually harassed women sought a formal remedy. Similarly, Fresno studies report that from 0.9 to 2.7 percent of the women took formal action. According to the MSPB study, 3 percent of the females and 2 percent of the males indicated that they filed formal complaints. Why so few? One explanation is that many people reported feeling that nothing would be accomplished by such action or that things would become even worse. Unfortunately, they have cause for such opinions. Forty-one percent of all victims of sexual harassment found that either their situation worsened or nothing happened when they took formal action. Other possible explanations for such a low rate of formal action are that many people are unaware of formal processes or proper agencies, or they may feel that they will be ridiculed or not taken seriously if they seek help. Some people are unaware that sexual harassment is illegal.

Chapter II

WHAT YOU CAN DO ABOUT SEXUAL HARASSMENT

This chapter discusses what you can do about sexual harassment. It begins with an overview of considerations for deciding what course of action to pursue. The chapter then proceeds with a discussion of documenting the experience, finding support, using alternatives to the complaint systems and filing a complaint.

Deciding How to Resolve the Situation

The most critical decision to be made when faced with sexual harassment is what to do to resolve the problem. Unfortunately, it is too often also one of the decisions which is most overlooked. In anger, frustration and hurt, most women bound headlong, with a lack of information, into a process that cannot provide what is needed to resolve the sexual harassment. This section is designed to assist you in making the critical decision about what will make you feel better about yourself and result in a positive resolution.

There are a number of questions to ask yourself before you can make an informed decision about what is best for you. They fall into the following major areas:

Personal considerations
Deciding what you want
Strategies for achieving your goal

Many of the decisions which must be made are not easy. Most of the questions you must ask will not have easy answers. Attempting to answer them will help you clarify your own personal needs and expectations, and direct you toward the best process for getting what you want and need. There is no one solution or answer for what to do about sexual harassment. What works for one person in a particular situation may be the worst possible choice for another in a different situation. Also, there is no right or wrong decision. Only you can decide what is best for you, and the best for you can range from making a decision to ignore the harassment to filing a lawsuit.

Personal Considerations

Personal considerations must be carefully weighed before you make any decision. Answer the following questions honestly. Although you may want to talk it over with others before you make a decision, be sure that the decision is yours and is one that you can live with. Too often, women are advised to file a complaint as the "only" or "best" way to fight sexual harassment. This option may *not* be the best for you in your situation. Be aware that advocates do have a tendency to expect others to respond to sexual harassment in the same manner as they would. Do not be pressured to go in a particular direction if it is not right for you. Answering the following questions will assist in making the right decision—for you.

1. How serious is the sexual harassment? Is it a mild irritation or does it have the potential to affect your career or education?
2. How much time and energy are you willing to commit to resolving it? Can you spend one month, one year, three years or more seeking a resolution?
3. What are the relative risks if you do complain? What are the risks if you do not complain?
4. Can you afford to lose your job, change your career or change your major?
5. What are the economic factors? Will there be legal costs to you? What about costs for health care and counseling costs because of either the stress of the sexual harassment—or—the stress of pursuing a complaint?
6. How much personal support can you expect from family, friends, co-workers, schoolmates, etc.?
7. Can you withstand the pressure of pursuing a formal complaint or a lawsuit?
8. Do you think you will be harmed more by complaining or by not complaining? Are there fears you have about holding your personal life out for public scrutiny? If so, are those fears reasonable?
9. Are resources available to you to assist in the pursuit of a resolution? (Are there attorneys who know sexual harassment law, support groups or sympathetic unions to provide assistance?)
10. If you choose not to complain will it cause you excessive conflict?

After answering these questions honestly, consider next what strategies might work in your particular situation. Remember, no two situations are the same and both the above questions and the strategies which follow are tools for making an informed decision in your situation.

Deciding What You Want

It is essential that you know *what you want* as a resolution to the sexual harassment before you choose a strategy. Certain "remedies" are only available in particular forums (for example, back pay may be obtained through a federal or state agency complaint, settlement or a lawsuit, but not from filing a criminal action for sexual assault or through an infor-

mal complaint) and in some cases, readily available remedies are not ones that will make you feel as though the situation is resolved. (Refer to Chapter X on Remedies for a list of usual remedies if you are not familiar with them.) This particular section is designed to help you decide what will make you feel better and how to proceed toward achieving it.

After you have decided to take action you must determine if it is more important to gain something to pay you back for the harm you have endured or whether your primary objective is to punish the harasser. In less serious cases, it may be sufficient to be assured that the harassment will stop. It is not unusual for women to ask for the harassing behavior to stop and to want nothing more. Others feel that even if the harassment ceases, their primary need is to have the harasser "pay" for his actions by being fired, demoted, etc.

You must realize that most processes are designed to make the *employer* liable for the discrimination, *not* an individual. Punitive action, or even an apology from the harasser, may be difficult to obtain—possibly because the employer and the individual see it as an admission of "guilt." Employers seem more open to settling the complaint by providing something *for* the complainant such as back pay without having to admit to illegal discrimination. It is important to keep this in mind when deciding what you want.

Be Realistic.

The remedy you want—or need—must be "appropriate" for the harm you have suffered. Although there is no set guide for comparing the two, try to list those monetary and personal losses which are a result of the harassment. For example, if there has been no loss in pay, medical costs, lost opportunities for promotion, etc., it *may* not be realistic to expect monetary compensation. In some instances, no compensation is realistic. (As an example, a case of co-worker harassment which caused only "uncomfortableness" and was immediately corrected by management may not realistically warrant any compensation because the injury was minimal.) However, in a situation which has caused more severe injury, such as loss of job, and injury due to stress, it is important that you have not forgotten less obvious costs, such as counseling costs, transportation to and from medical or therapy appointments, attorney's fees, loss of future wages and benefits, etc.

Be Creative.

Do not limit your considerations of what would make you feel better to the obvious. If you think something is appropriate and would be acceptable for the situation, then propose it. Examples might be having the employer: pay your salary while you study the sexual harassment issue and propose internal policy for the company; compensate you while you learn a new trade or work for a community organization; or create a panel of employees to study the issue and create a complaint procedure for the company. The only limits to keep in mind are that the remedy must be within the employer's (or school's) ability to provide and that it must be appropriate considering what you have suffered.

Be Prepared for the Worst.

When filing a complaint of sexual harassment, you need to be prepared for the possibility that you will receive nothing more than the satisfaction of knowing that you tried to rectify an unfair and illegal situation. It is possible that you will invest much of your time, resources, and energy, and receive no compensation at all. Large cash settlements, even in the most well-documented and egregious cases, are rare.

Strategies for Achieving Your Goal

The next step is to decide on a strategy or a combination of strategies for getting what you want. First, examine the power relationships involved. Who has the power in this situation? Can you use it or is it likely that it will be used against you? In a situation where the harasser has no power over you and has made unwanted verbal advances, you may decide that you wish to confront him yourself in person or in a letter and if that does not work, to file a complaint with your supervisor. If you are credible (and he is not) and you know the supervisor will take care of it, there may be little risk to you. This is an easy way to handle the matter. However, verbal sexual advances from a supervisor in a situation where he has great credibility and power in an organization and you are a relative newcomer with little power, will require more thorough strategizing and a different method of resolution. The risk involved in this situation is much greater. Also, remember that if a co-worker is doing the harassing, the employer is not liable unless the employer knows or should have known of the harassment. This requirement may affect your decision to notify the company officially in cases of co-worker harassment.

Next, you need to decide if you can achieve a quiet resolution with few numbers of people involved in the disclosure, or if it will require public scrutiny to enforce the sexual harassment laws. Personal, self-directed actions such as confronting the harasser and letting him know that you do not like what he is doing, whether by letter (see the section on writing a letter) or in person can be effective in some situations. There are individuals who honestly do not know that they are being offensive and when confronted, will stop. Having someone else discuss the situation with the harasser may also work. There are situations, however, where merely raising the issue will result in retaliation such as poor performance reports, termination from employment or lowered

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grades. If this is the situation with which you are faced it may be necessary to confront the problem publicly (or through a "formal" process) in order to develop some protection for yourself. You must be ready for a very public and possibly messy fight over your credibility and your charges, but there are times when it is the only way to complain and survive. Going public has the advantage of bringing public scrutiny to the complaint and making any adverse action taken against you look like retaliation. Sometimes this is the only protection you have in the short-term.

The timing of your action is critical, whether it is a personal strategy, such as a letter, or a formal EEOC complaint. Never do anything without being prepared. Document absolutely everything (see the section on how to document) and be ready with the appropriate action when you feel the time is right. (CAUTION: Never miss a filing deadline because of concerns over timing. Be sure you know the filing deadlines for filing a formal complaint or lawsuit!)

If you choose to confront the harasser directly and he is your supervisor, it will probably be best to do so after your performance report is completed, instead of just prior to it being due. Make sure your work is up to date and your performance is above standard if at all possible, since that will remove some of the risk involved. You may also want to wait until a particular project is completed or an assignment is made or even until you are transferred to another unit. If the situation is serious, such as one that includes physical or sexual assault, you may not have any choice but to report it immediately and be ready to document and find support afterward.

Timing in cases of sexual assault is just as important, but in a different way. In this case, waiting before you report it may actually damage your case by destroying evidence and diminishing your credibility.

Another major consideration is knowing who your friends are—and in what way they can assist you. As an example, if you know that the employer or your school takes the issue of sexual harassment seriously, you may be able to count the personnel officer, affirmative action officer or dean of students as a friend. On the other hand, they may actually be the worst persons from whom to seek advice and to expect assistance. Determine the role of these individuals at the institution and their reputation for handling problems. Will their involvement help or hinder your attempt to gain resolution? Carefully sort out who you expect to be friends and enemies before you choose a course of action. If you have few friends within your organization, then you may want to consider options outside your organization, such as finding community or legal assistance or filing with a government agency.

There are no perfect strategies. In spite of the best preparation, you may not be able to predict the degree of your success or be assured that the path you choose is the best considering the circumstances. However, carefully analyzing the above personal considerations, deciding what you want and need, as well as strategizing before you begin a process will increase your chances of obtaining an acceptable resolution.

Documenting the Experience

Documenting your sexual harassment case is extremely important for a variety of reasons. You need documentation supporting your claim. A clear, concise record of events and incidents will help you prove that the harassing behavior occurred. You should also record the effects of the harassment. Such a record should detail the physical and emotional effects you have experienced as well as the effects of the harassment on your work and career possibilities. Most women find that recording the experience is useful for gaining a better understanding of their feeilings.

A Journal

Start keeping a journal or diary of events, including dates, actual conversations, potential witnesses, describing the who, what, where, when, and how of the incident. DON'T LEAVE IT AT WORK!! OR SOMEWHERE ELSE WHERE IT CAN BE EASILY STOLEN. (See section on keeping your journal.)

- Let sympathetic co-workers know what is happening and how you feel.
- Talk to the harasser and let him know you dislike his behavior. You may want to put your protest in writing as well. (See section on writing a letter.)
- If possible, you may want to tape record his harassment. (There are some risks involved, which are described in the section on tape recording evidence.)
- Keep any notes, cards, presents or any other "physical" evidence that you have received from the harasser.
- If any of the harassment results in bruises or ripped clothing, have a picture taken of the bruises and keep the clothing. Date and identify each picture, including the name of the individual who took the picture.
- Get copies of positive work evaluations or other evidence indicating that you are doing a good job. You have the right to have access to your personnel file.
- If you are a union member, contact your local representative or shop steward and follow grievance procedures as outlined in the contract. Follow up all telephone contacts and meetings in writing.
- Write a complaint to the harasser's supervisor

and pursue it through higher internal channels if appropriate. Keep copies of all correspondence about sexual harassment for your records.

- If you seek medical care for stress or other ailments related to the harassment, tell your physician about the harassment. It is best to be specific about the events and not merely say that it is due to undefined "job stress." Tell your family and friends how the sexual harassment is affecting you and keep detailed records.
- The following symptoms* or facts have been introduced into evidence in decided federal cases as elements of damage to establish mental distress in discrimination actions. If you are experiencing any of these, keep detailed records.
  - —Sadness
  - —A feeling of loss to oneself
  - —Intensive feelings of anger
  - —Intrusive images of the discriminatory event which interfere with normal activities
  - —Indecisiveness
  - —Necessity for medical or counseling services, including medication
  - —Discouragement
  - —Nightmares
  - —Tension
  - —Anxiety
  - —Reliving the experience
  - —Irritability, intolerance
  - —Withdrawal
  - —Sleep and appetite disturbance
  - —Depression, including:
    - –morbid sadness
    - –inactivity
    - –self-criticism and self-deprecation
    - –a negative attitude toward self, the outside world, and the future
    - –mixed feelings of love and hate
    - –mirthless smiling
    - –morning depression alleviating as the day progresses
    - –reduction in gratification from biological activities such as eating or sexual experience
    - –declining interest in activities
    - –inability to make or vacillation in making decisions
    - –negative expectations as to the future
    - –reversion to more infantile ways of coping with the environment
    - –preference for transient, immediate gratification over prolonged satisfaction
    - –increased dependency on others
    - –rage and hostility repressed and turned within oneself
  - —Refusal to talk about the incident
  - —Verbal expressions of frustration
  - —Lowered ability to form emotional attachments
  - —Loss of sense of humor
  - —Loss of self-esteem
  - —Self-blame or self-criticism
  - —Effect on relationships with men (in a case brought by a woman), women (in a case brought by a man), etc.
  - —Physical symptoms, including:
    - –upset stomach, indigestion
    - –ulcers
    - –nervousness
    - –loss of appetite or unusual weight gain
    - –loss of sleep or sleep disturbance
    - –impotence
    - –nausea
    - –intensified allergic reactions
- Other evidence to substantiate a claim of emotional distress includes:
  - –breakdown in family relationships, including separation or divorce
  - –personality alterations
  - –change in address
  - –impaired job performance
  - –failure to seek other employment or housing to prevent a recurrence of the injury
  - –exposure to outrageous conduct, including abusive language, rudeness, summary eviction without notice
  - –inconvenience suffered
  - –public nature of discrimination
  - –number of times exposed to discriminatory treatment
  - –stress of involvement in litigation
  - –necessity of communicating discrimination to others, including friends, co-workers, and family
  - –necessity for discussion of the discrimination with others including testers, co-workers, supervisors, or strangers.

* This checklist is based on decided cases, checklists contained in various treatises and the testimony of expert witnesses before the Kentucky Commission on Human Rights in 1980 contained in Volume 1 of *Damages for Embarassment and Humiliation in Discrimination Cases.*

- Keep a copy of your claim if you file for unemployment insurance benefits and state sexual harassment as the reason for your termination or for leaving your job; likewise keep a copy of a worker's compensation claim for stress-related illness due to the sexual harassment.

Any or all of these may be used to document your experience. The critical factor is that you document your situation in the best manner possible. Never assume that you do not need to keep records because you expect to resolve the situation easily. (Adopted

and reprinted with permission from the Working Women's Institute (in N.Y.) "Know Your Rights" handbooks.)

Keeping A Record

You should write in detail, all events and incidents pertaining to the working environment, the sexual harassment incident, the harasser, and how it made you feel both physically and emotionally. Include the names of any witnesses, and describe the consequences of the harassment, such as being denied a promotion. This record should describe the who, what, where, when, and how of each incident in as much detail as possible. Be careful not to include personal details which you would not want disclosed in a courtroom setting.

Keep copies of any other documentation such as medical reports documenting physical and emotional symptoms as a result of sexual harassment, performance reports from your job, and correspondence from the harasser.

Your journal should be kept in a place away from the work site. You need to make sure that it is not lost or viewed by others without your authorization. The following are examples of journal entries: (Note: these names are fictitious and appear only for the purpose of this example. Any resemblance to real persons is purely coincidental.)

September 9, 1981, 10:35 a.m.: My supervisor, Harry Simpson, was propositioning me today. He asked me to come to his office at around 10:35 a.m. and then requested that I take an extended lunch with him so he could get to know me better. (He winked at that point.) He eyed me up and down, and commented that he felt that there was a lot to get to "know." I felt very uncomfortable, and declined the invitation.

September 12, 1981, 11:45 a.m.: Harry Simpson, my supervisor, asked me to lunch again while we were standing by his office door. He said he had reserved a room at the Wilshire Hotel and had hoped I would join him for "room service." I explained to him that I am very involved with a gentlemen and was not interested in his offer. Alicia Hernandez works with me. She was near the coffee machine and overheard most of the conversation. If she had not been within earshot and heard Simpson, I might not have believed it happened. I was truly shocked and embarrassed by his comments. I asked her to write down what she heard us say. Her note to me is attached as Exhibit A.

September 20, 1981, 4:16 p.m.: I feel very uncomfortable around Mr. Simpson these days. It's difficult to explain, but I feel as though he is undressing me with his eyes whenever I see him. I get so flustered when he hangs around my work area. I cannot concentrate on my work and am worried the project I am working on is suffering. Like today, he came over about 20 minutes ago to my desk, leaned over in front of me, stared at my breasts and asked me if I had everything I needed. He was sure he could make it easier for me if I would just let him.

September 28, 1981, 8:37 a.m.: I took last week off from work. I had been feeling so uncomfortable at work with this situation involving Mr. Simpson that I felt I needed a little time off. When I returned, I found a note in my mail basket. It said "Room 326 at the Wilshire. Hope you can make it for lunch. H.S." (See Exhibit B) I first blushed from the embarrassment and then I felt extremely angry. I told him I was not interested in a relationship, but he continually pesters me with his stares, comments, invitations, and propositions. I decided to write him a note. Here's what it said: "Mr. Simpson, I would appreciate your leaving me alone. You keep asking me out. I am not interested in any type of relationship with you other than a professional one. Your comments and stares are embarrassing and make me very uncomfortable. I am worried that my work will suffer. I want you to treat me in a professional manner from now on. Emily Watson." (See Exhibit C) I hope it makes him stop.

September 29, 1981, 11:28 a.m.: Of all the nerve! I am fuming with anger! Simpson came up to my work area and said, "I got your note, and I got your message." (At first I felt a little guilty because I thought I had hurt his feelings.) Then he said, "So you want to keep it professional? OK, we'll keep it professional." He then placed a hotel room key on my desk with a $50.00 bill. I was floored! Alicia Yee was standing right there and saw the whole thing. I stormed out of the office and went into the Personnel Director's office (Mr. M. James). I told him about the remarks and key as well as other incidents. Mr. James says he will make Simpson stop harassing me.

* * * * * * *

Note: it is better to write more than you need for documentation purposes than not enough.

Tape Recording As A Method Of Evidence Gathering

Careful consideration should be given, prior to tape recording conversations and incidents of sexually harassing behavior as a method of documenting them, or as a means to induce the harasser to stop the harassment. Because the law in this area is so confusing you should consult an attorney before proceeding.

According to the *California Penal Code* (P.C.) section 632, tape recording a "confidential communication" without the consent of all parties is an invasion of privacy. Confidential communications include those conversations or communications that take place between individuals *with the general under-*

standing that the communication will remain confidential and will not be disclosed to other parties. This probably does not include typical social conversation at the work place. Violation of P.C. section 632 is punishable by a fine (not exceeding $2,500), or imprisonment, or both. (Higher penalties are prescribed if it is a second offense.)

If you do tape conversations, the harasser is likely to argue strongly that such evidence is inadmissible in court, based on P.C. section 632(d) which states that "Except as proof in an action or prosecution for violation of this section, no evidence obtained as a result of eavesdropping upon or recording a confidential communication in violation of this section shall be admissible in a judicial, administrative, legislative or other proceeding." This is especially true if the tape recording is the only solid evidence in the victim's favor.

Your Personnel File

Another major source of documentation for sexual harassment complaints is your personnel file. You have the right to gain access to, and inspect, your personnel files and records. *California Labor Code* section 1198.5 gives this right to employees in the public sector (other than state employees and certain public school district employees), and the Information Practices Act of 1977, *California Civil Code* sections 1798.30–1798.43, gives individuals the right to inspect personal and confidential information about themselves which is maintained by state offices, departments, divisions, bureaus, boards, commissions or other state agencies. See also *Government Code* section 31011 (County employees' right to inspect performance records); *Education Code* section 27031 (Community college employees' right to examine personnel files) and *Education Code* section 44031 (Secondary and elementary school employees' right to inspect personnel files.)

After gaining access to your personnel file, you should make copies of all records, including job performance reports. If possible it is best to do this before complaining about the sexual harassment. These records can help protect you. The information in your personnel file possibly may be tampered with, or changed, as a result of the act of harassment or the complaint of sexual harassment. If you have a copy of your pre-harassment or pre-complaint personnel file, you can better substantiate any retaliation or other adverse consequences.

Witnesses

If someone has observed or overheard the harassment, ask the person to come forward as a witness to help prove your claim. You may request that the witness write a detailed statement describing what he/she saw or heard. (See Appendix for a form to use to obtain an *affidavit* (which is usually notarized) or a *declaration* from a witness.)

If the harassment has always happened in private, and there is no possibility of witnesses to the actual incidents, you may still be able to get help from your co-workers. Discuss the incident with people at work whom you trust. You may also try to start a general discussion of sexual harassment with co-workers, to prompt them to open up about incidents that have happened to them, or that they have witnessed. This can help verify whether a harasser has a history of harassing others. You may be able to use this information to support your case.

In some cases an alleged harasser may counter sue alleging defamation. You should be careful about what you say to others. A defamatory communication is a false statement made to another which tends to lower a person's esteem in the eyes of others or exposes a person to hatred, contempt or ridicule or injures him in his occupation. It may be in writing, in print or a in picture (libel) or it may be spoken (slander). Defamatory communications make a person suffer damage to his reputation, career or character. The individual charged with defamation may be held responsible by the courts for the compensation for those damages, but truth is a defense. For your own protection, you should be discrete in the means you use to obtain evidence and gather witnesses to prove your claim. Try to focus your attention on the facts instead of allowing your personal opinions about the harasser to get involved in your inquiries. Use discretion when deciding with whom you discuss the specifics of the sexual harassment directed at you or witnessed by you.

Developing A Chronology

A chronology is a summary of incidents and events of employment, harassment and of the post-harassment period. This documents all of the incidents that an individual may have already recorded in her journal, but without the details. Attachments, such as performance reports, notes from the harasser, etc., may be added if appropriate. A chronology should be a concise overview of the events leading up to, including, and resulting from an act of sexual harassment. From a chronology, the reader can quickly find out the basis of a complaint and view the supporting evidence to determine if a complaint is legally provable, without having to read through a lengthy narrative.

Example Of A Chronology:

Event	*Parties Involved*	*Date*	*Results*
Received job offer from Acme Company	Betty Jackson, Personnel Office	5/03/81	Began job on 5/16/81
Received first employee evaluation (See Attachment 1*)	Carl Fishburn, Supervisor	8/16/81	Commendable job performance
First incident of harassment (comments of a sexual nature) (See Attachment 2)	Carl Fishburn	9/10/81	I ignored incident
Department luncheon, was "heckled" by supervisor who teased me about the size of my breasts (See Attachment 3)	Carl Fishburn Witnesses: Kate Thomas, Jim Williams	9/15/81	I felt humiliated
Received note from supervisor requesting a "date" (See Attachment 4)	Carl Fishburn	9/23/81	Declined invitation
Received letter of commendation regarding my handling of a client's complaint (See Attachment 5)	Carl Fishburn	10/02/81	
Was propositioned again by supervisor (See Attachment 6)	Carl Fishburn	10/08/81	Informed him I was not interested
Wrote letter to supervisor telling him to stop harassing me (See Attachment 7)	Carl Fishburn copy went to Eva Perez, Personnel Manager	10/10/81	
Received letter from Carl denying harassment incidents (See Attachment 8)	Carl Fishburn, copy went to Eva Perez	10/12/81	Meeting with E.P. arranged
Meeting with Eva Perez to describe harassment incidents	Eva Perez	10/15/81	Complaint was not taken seriously
Received second employment evaluation (See Attachment 9)	Carl Fishburn	11/10/81	Job performance ratings have declined
Contacted supervisor about rated performance level	Carl Fishburn	11/12/81	Meeting scheduled with C.F.
Meeting with Carl Fishburn (See Attachment 10)	Carl Fishburn	11/18/81	Sexual harassment again occurred
Meeting with Eva Perez about new incident	Eva Perez	11/19/81	Transfer requested and denied
Session with psychology counselor	Samuel Russo	11/23/81	Therapy sessions begin due to stress
Formal transfer requested to Shipping Department	Eva Perez, Robert Chang, Supervisor of Shipping Department	12/05/81	Transfer again denied
Filed formal complaint with Personnel Office (See Attachment 11)	Eva Perez, Donna McIntosh, Investigator	12/07/81	(now pending)
Filed complaint with DFEH (See Attachment 12)	Barbara Lopez, Consultant	01/10/82	Charge Number 83FEP117436

* While this sample chronology references Attachments and does not include corresponding sample attachments it is nonetheless important to support the events described in the chronology. You should prepare or include actual documentary evidence such as in this case, the employee evaluation received from Carl Fishburn on 8/16/81.

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Documentation Of Damages

As noted above, documenting the damages you have suffered because of sexual harassment is essential to making your case. You must be able to show some harm or injury in order to successfully pursue a legal remedy. As you know, the stress created by sexual harassment can have a direct impact on your job performance, your self-confidence, and your personal relationships. Common responses to sexual harassment are fear and a negative self-concept, which come from the sense of powerlessness you may feel. Your anger may be internalized and may manifest itself in guilt and self-blame. These are destructive but common reactions to harassment. Your internalized anger may also show up in physical symptoms such as headaches, stomach aches, or other illnesses. It is important to document all the types of injury that you have experienced as a result of sexual harassment, i.e. physical, emotional, and economic. Talk to family and friends about what you are experiencing and keep records of the conversations if possible. Tell them about any changes in eating and sleeping habits, mood swings, and how you feel each day (about work, yourself, your friends and family). Your testimony and theirs will be critical in proving your damages.

Knowing Policies And Procedures

You should investigate and understand your organization's and/or labor union's policies and procedures before filing a complaint or grievance. An official policy statement regarding sexual harassment may offer specific guidelines, procedures and options for you to pursue. In addition, it may disclose further violations by an organization which is not in compliance with its own policy.

See the sections of the manual on using the Administrative/Legal System for more details on complaint filing procedures.

Finding Personal Support

Family And Friends

Some women have the good fortune to be surrounded by loved ones who understand the toll that sexual harassment takes. If you have sympathetic family or friends, call on them for support. If you are experiencing on-going sexual harassment, or you are using an administrative or legal process to deal with the sexual harassment, it is crucial to find sympathetic listeners because of the stress. If the harassment, or your endeavors to recover from it, drags on, it can exhaust your personal resources, leaving you drained or feeling "crazy." Sometimes just reminding yourself that this is a common reaction can be helpful. Doubting yourself will further deplete your energies. If you need help, and most of us do, seek it out, ask for it, do not be afraid to admit that it is easier with support.

But what if the people around you are not helpful? You may find yourself frustrated and angered by the responses you receive from the people close to you. These may range from mothers, sisters or friends whose reactions are "So what else is new?" or worse yet, "That's what you get for . . .," to men friends/spouses blaming you or verbally and even physically abusing you. What can you do to get the support that you need from family and friends? First, see if you can educate them about sexual harassment, how it affects people and how they can help you. This can take great patience and energy, but has several benefits:

1. You will not feel as isolated.
2. Giving and receiving support will help preserve your relationships during this stressful period.
3. It is less expensive than formal therapy, and often is sufficient. (It will not substitute for formal counseling in all situations.)

So, how to begin? Start by asking those close to you to listen to your story without judging it or even commenting at first. Tell them what you felt and how you reacted; tell them why you reacted that way ("I was too stunned to say anything," "I was so angry," "I was afraid I'd lose my job," etc.). Ask them if they have any questions about what you have said. If you feel put down by the way their questions are asked, comment on how that feels before answering. Then, if you feel that you would like further support from that person, tell her/him that it has felt really good to work this out with her/him, and ask if s/he would be willing to talk about it more in the future. If there are any specific ways that the person might be helpful, ask directly for these. Hopefully the person will only say "yes" to the things s/he is comfortable with doing.

It is important to decide before this kind of discussion whether you have the strength to debate the issue or not. If you are feeling too vulnerable, or know you could easily feel hurt by the other's lack of acceptance, make it clear that the issue is too close to you at the present time to deal with on that level—you want caring and support, not debate. If the persons you are discussing the problem with doubts that sexual harassment "truly" exists, refer them to the EEOC guidelines which represent federal recognition of the problem of sexual harassment. Or recommend one of several good books on the topic, such as *Sexual Shakedown* by Lin Farley, *Sexual Harassment on the Job* by Backhouse and Cohen or *Sexual Harassment of Working Women* by Catherine MacKinnon.

If you feel threatened rather than supported by your "significant other," you may want to seek counseling as an individual or as a couple. If your partner threatens you and the situation is beyond your con-

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trol, you might want to stay with a friend or contact the nearest women's shelter for advice and assistance.

If you have a child or children, it could be important to talk to them about the harassment if they are old enough and mature enough to understand the situation. It will be helpful if they understand why you are under a lot of pressure. It will also teach them that harassment is unacceptable behavior which they need not tolerate.

Peer Counseling Support Groups

In most communities, there are a variety of self-help, advocacy, referral-and-information, and professionally-led women's groups available. Turn to the members of these groups for peer counseling. If you do not know of such a group, check the phone book for women's organizations or women's centers, or use any organization with which you are affiliated (e.g., a church group) to start a peer counseling group.

Sexual harassment peer counseling is a process in which a person who is not a mental health professional works with someone who is seeking help to: (1) assess the scope and nature of the problem; (2) clarify the specifics to be worked on; (3) explore options and resources; and (4) focus on further steps that may be taken.

An organization which elects to provide peer counseling services should screen potential peer counselors carefully, and train them in the techniques of this type of counseling and the subject of sexual harassment. Because most organizations experience a lack of volunteers at times, it is often tempting to assign tasks that are not suited to individuals. While we can all expand our skills and grow, it is important to recognize both the validity of some people's desires not to counsel, that good counseling skills do not always come easily, and that most groups devote minimal time to training. In other words, be selective in choosing peer counselors in order to protect the quality of counseling.

To be an effective and responsible counselor, a person's training should include: (1) an examination of her own judgments, fears, reactions in crises, and attitudes about women and their emotional health; (2) listening skills; (3) an overview of what is and is not helpful to people experiencing sexual harassment; (4) how to avoid rescuing; (5) how to promote feelings of power and a positive attitude in others; (6) how to evaluate if the person's psychological state requires the help of a trained therapist; (7) how to avoid the "burn out" associated with being a peer counselor.

If you are looking for someone to train counselors in these skills, make sure she/he has: crisis counseling skills; perspectives about women, sexism, etc., that you are comfortable with; sensitivity to your race, class, sexual orientation, disability and other concerns; and an understanding of the dynamics of sexual harassment, in particular its emotional ramifications. Sources for finding a trainer might be the nearest women's center, a local college, a community mental health center, or mental health practitioners who advertise in community newspapers. Often, licensed marriage, family, and child counselors (MFCC's) or licensed clinical social workers (LCSW's) lead this type of training. It may be best to obtain referrals from women who have obtained good counseling for sexual harassment-related problems.

Individual Counseling

Under what circumstances should you seek a licensed counselor or therapist? Only you can make that decision. Remember, it is not the last or the most drastic step a person can take—as a matter of fact, you should seek counseling long before you become desperate. Here are some guidelines to help you make your decision. Seek professional help if:

1. You have not been able to find a support group that meets your needs, and/or if your personal problems are multiplying. Seek help before you feel completely overwhelmed.
2. You have difficulty standing up for yourself. You might look for an assertiveness class or a therapist who specializes in assertiveness training.
3. Your personal "support network" just is not giving you enough support, or is not giving you the kind of support you need.
4. You are feeling depressed a great deal of the time.

How do you find a therapist who has some insight into the dynamics of sexual harassment? If there is not a women's center or therapy referral service in your area, the safest bet would be to locate a counselor who identifies herself as a "feminist," someone sensitive to women's status in society with an understanding of the power relationship between men and women and the role of this power relationship in sexual harassment. The risk of running into skepticism about the problem of sexual harassment ("If you had worn the proper clothes it wouldn't have happened," "Women should expect that sort of thing if they're going to work with men," etc.) is lessened if the counselor has a clear understanding of sexual harassment.

If you cannot find a therapist who is personally recommended by someone you trust, ask for three names from a source you trust or you may want to check classified ads if you have no other sources to obtain referrals. (A description of the services may be better than just a phone book listing.) Call each one.

Obtain the following information: (1) Has this person ever dealt with issues of sexual harassment? (2)

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What are the fees and is health insurance accepted (if applicable to your situation)? (3) If age, race, religion or sexual orientation considerations are important to you, find out if the person is sensitive to your needs. In addition to asking anything else of importance to you, examine your feelings about the therapist's responses and phone manner and if you are not comfortable, try someone else. It generally takes a few counseling sessions for both parties to evaluate in which direction to proceed. However, if you have a very negative reaction in the first visit, you may want to reconsider your choice of therapists.

Ability to pay is often a problem when seeking counseling. If you belong to a health maintenance organization (such as Healthcare or Kaiser), or there is a county/city community mental health clinic near you, cost might not be a factor, although your choices are limited by such institutions. If you have health insurance, check your policy carefully or call the local insurance company office to find out whether outpatient mental health psychological services are covered. Ask what range of practitioners are covered (psychiatrist, psychologist, licensed social worker, or licensed marriage, family and child counselor). Usually the coverage is for a percentage of the total cost and there is a maximum allowance per year. Fees usually range from $25–$100 per hour, although some practitioners have sliding scales and their fees may be lower.

Finding Supportive Community Resources

There are a number of community resources you can use to gain support in dealing with the effects of sexual harassment. Various legal aid organizations can inform and counsel you about your legal rights, about relevant legal issues, what course of action you may want to pursue, the availability of compensation to reimburse you for any damages you have suffered, and legal advocates in the area who specialize in sexual harassment complaints.

Various city, county, state, and federal agencies may also offer direction or support. The California Department of Fair Employment and Housing (DFEH) and the Equal Employment Opportunity Commission (EEOC) are complaint agencies which may provide helpful information on complaint procedures. A local Human Rights Commission also may assist in resolving complaints. The California Occupational Safety and Health Administration (Cal-OSHA) could be contacted for information on local resources. Your County Public Health and Mental Health Departments may know of practitioners who specialize in the area. There are many community projects available that also may be of assistance. Hotlines, crisis centers, and women's resource centers are located in many communities. These organizations not only have an information/education component but often provide emotional support groups. Human Rights Commissions, City, County and State Commissions for Women, and the Women's Action Council provide information and referral services.

In addition to government agencies, political action groups can be contacted for support because many of these groups have employment or civil rights task forces. The National Organization for Women (NOW) has national, state, and local offices. NOW has a special interest in issues affecting women, and may be able to recommend other helpful local agencies. A women's legal service such as Feminist Legal Service of Sacramento may serve a similar role, in addition to offering support in a legal counseling capacity. The American Civil Liberties Union is another political action group that may be a supportive resource.

The Women's Equity Action League, the Women's Action Alliance, the Women's Action Council, Working Women's Institute, and the Women's Liberation Center are additional, though often not local, sources of support. For example, the Women's Action Alliance, which is based in New York, refers to itself as a clearinghouse on women's issues and programs. The Alliance can supply you with information and put you in touch with appropriate agencies in your geographical area. The Women's Equity Action League (WEAL) files discrimination complaints on behalf of women. Although WEAL is based in Washington, D.C., there are WEAL offices located in many major cities. The Working Women's Institute in New York City can provide or direct you to invaluable resource materials on the issue of sexual harassment.

A number of private and public organizations are available specifically for minority women. A few such organizations are the California Coalition for Indian Women; Bay Area Black Women; and Black Women Organized for Political Action. Advocacy organizations are also available for state employees.

If you are a member of a union or other labor organization, you may want to enlist their support. They should have a grievance policy and procedure and an advocacy program which, as a member, you are entitled to utilize. You are entitled to *fair* representation which, however, may not be *full* representation. This means that the representation provided to you must be objective and competent but that the union is not required to represent you on each and every aspect or procedure involved in obtaining relief.

Professional and trade organizations may prove to be useful resources. Tradeswomen, 9 to 5, California Businesswomen, California Federation of Business and Professional Women's Clubs, or the National Education Association are all examples of such organiza-

tions. They may have advocacy programs or information referral services.

Other resources may assist in your situation. Newspapers publicizing your case draw the attention of other groups which may help you. The media can also put you in contact with support organizations. Discussing your case with the press or a talk show host on television or radio may help you to gain support from other groups; it may also help you cope with what you have been through. Others who have been through a similar experience may identify with you and help you or turn to you for support. However, be aware that such media coverage may lead the harasser to claim defamation or unfair pretrial publicity if the discussed events will adversely affect the case.

Religious and social organizations may provide support and can be useful resources. For example, the Young Women's Christian Association (YWCA) and the Jewish Federation both offer counseling services, as do many denominations and religious orders. These groups may offer you emotional support and operate as a referral service.

The previously listed public and private agencies, legal aid associations, and religious social organizations can be located in directories often found at public libraries. There are many publications and manuals that list names, addresses, and telephone numbers of specific agencies.

The following list of directories includes examples of only some of the publications available to meet your needs. Some directories list services and agencies for a particular community or state, while others list services and agencies available in the United States.

1. Directory of Financial Aids for Minorities 1984–1985
   Fail Ann Schlachter, 1984
   ABC-CLIO Information Services
   2040 Alameda Padre Serra, Box 4397
   Santa Barbara, CA 93103

A listing of: Scholarships, fellowships, loans, grants, awards, and internships designed primarily or exclusively for minorities; state sources of educational benefits; and reference sources on financial aids. Available from:

Clio Press, Ltd.
55 St. Thomas Street
Oxford OX1, 1JG, England

2. The Directory of Special Opportunities for Women (1981)
   Edited by Martha Merrill Doss
   Garrett Park Press
   Garrett Park, Maryland 20766

A national guide of educational opportunities, career information, networks, and peer counseling assistance for entry or reentry into the work force.

3. Community Relations Directory 1984
   California State Personnel Board
   Selection Programs and Services Division
   Recruitment Unit, 1984
   801 Capitol Mall, MS 44
   Sacramento, CA 95814
   (916) 445-7236

A listing of all community-based organizations (CBO) by target groups (i.e. American Indian, Asian, etc.); newspapers, newsletters, and magazines by target group; and a listing of colleges.

4. 1984 Resources Directory Mountain-Valley Library System (MVLS) (May 1984)
   828 I Street
   Sacramento, CA 95814

A directory of libraries and information centers in the north central California area served by Mountain-Valley Library System.

5. Attorney's Directory of Services and Information
   Federal, California State and County Governments (Fourth Edition) by
   Ellen N. Goldman
   California Continuing Education of the Bar
   Berkeley, California

Directory describes the functions of, and resources available from government information sources.

6. Social Service Organizations and Agencies Directory (First Edition) (1982)
   Anthony T. Kruzas
   Gale Research Company, Book Tower
   Detroit, Michigan 48226

A reference guide to national and regional social service organizations, including advocacy groups, voluntary associations, professional societies, federal and state agencies, clearinghouses and information centers.

7. Directory of Women's Organizations 1981–82
   Sacramento Community Commission for Women
   1122 17th Street
   Sacramento, CA 95814
   (916) 442-9232

8. Women Helping Women: A State-by-State Directory of Services (1981)
   Women's Action Alliance
   370 Lexington Avenue, New York, NY 10014
   (Neal-Schuman Publishers, Inc.)

A listing of battered women and rape victim services, career counseling services, displaced homemaker programs, planned parenthood clinics, skilled trades training centers, women's centers, women's commissions, and women's health centers.

9. Government Information: Where to Find It (1982)
   Jerry Jeffe

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Government Research
815 North LaBrea Avenue, Suite 197
Inglewood, CA 90302

A guide to little-known but valuable sources of information from federal agencies, California state and local governments.

10. Women Lawyers of Sacramento (WLS)
1986 Roster of Members
P.O. Box 161523
Sacramento, CA 95816
(916) 481-4893

11. Bay Area Public Interest Organizations
Directory 80
Public Interest Clearinghouse Resource Center
198 McAllister Street
San Francisco, CA 94102
(415) 557-4014

Finding Support At Your Jobsite

Support networks can be found in many employment settings. Such networks can range from monthly lunch groups to a formal women's caucus. Often, if you ask you will be able to determine if there is a supportive manager who will lend an ear and maybe even plead your case to the powers that be. Be discrete. It should not be difficult to determine if there are sources of support available at your jobsite.

Finding Legal Support

If you decide you want to initiate legal action to remedy the harassment, your first step is to find a good attorney, preferably with some familiarity with sexual harassment law and procedures. The main thing to remember is that choosing a lawyer is similar to buying any product. You have a right to shop around and choose one with whom you are the most comfortable. The hourly fees charged should be given to you over the phone on request. Some lawyers may also be willing to handle your case on a contingency basis (contingent upon recovery), which means payment eventually is made by the harasser and/or other liable party, not you. It would obviously be best to find an attorney with experience in handling cases involving sexual harassment.

Check with your friends for referrals to attorneys they trust either in discrimination law or in another area. Then ask that attorney for recommendations if s/he does not handle harassment cases.

Most local bar associations and some specialty bars (such as women and/or minority lawyers' associations) maintain referral services for the general public. Some even maintain such lists by areas of emphasis. Such referral lists are often comprised primarily of newer attorneys, so be sure to ask about experience and knowledge in discrimination law.

Many lawyers will not charge for an initial consultation, or will allow you a certain period of time before beginning the charges. That is certainly something to consider when choosing an attorney. You should ask the attorney whether she/he has had any experience with cases such as yours.

As you interview attorneys, you will find some that you will be more comfortable with, or have more confidence in, than others. Always ask how many cases like yours an attorney has handled. While your case will undoubtedly be different in many aspects, the more cases an attorney has handled, the more variations s/he has addressed. The attorney should be able to give you the background law in the area.

You should ask questions about the progress of your case, find out exactly what has been done, etc. If answers are unsatisfactory, you might consider finding another attorney. However, it is generally not wise to change attorneys unless absolutely necessary. Most attorneys are competent in general areas of the law, but it is important to monitor progress on your case and assure that it does progress. You cannot expect 100% of your attorney's time, since other clients have pressing problems that must be addressed. However, you should establish some form of regular communication with her/him to assess progress.

Most attorneys will ask for some money in advance, to cover costs or hourly fees. You usually will be billed monthly after that. Some will allow you to make payments over an extended period of time.

There is also a possibility of finding an attorney who will take your case on a contingency fee arrangement. Under such an arrangement, you will make a contract with the attorney in which you agree that the attorney will receive a set percentage of any recovery you receive. The "sure" cases, ones with plenty of corroborating evidence and particularly egregious harassment, are most likely candidates for contingency fees. Attorneys cannot afford to put out "billable hours" if they cannot be assured that these hours will be reimbursed at some point. A contingency fee arrangement allows the client to avoid paying the attorney for specific hours spent on the case. Often, however, the attorney will want the client to cover court costs, and other out-of-pocket expenses. Most attorneys, unless in large firms, cannot afford to advance such costs for clients. Depositions and other discovery (the process of collecting statements and applicable records, files, data, or other possible evidence) can be quite costly. It is neither customary nor fair to expect an attorney to pay for these expenses.

In major cities, there are public interest law firms, usually specializing in one type of law or another. Some emphasize women's rights issues, such as employment discrimination. They are generally funded by private contributions. These public interest firms often can be found through the legal community, referral services, directories, or even the phone book.

Some women's groups also maintain legal defense funds that can be tapped to cover legal fees, especially in cases that might set precedent by establishing a new interpretation of existing law.

Most areas of the country have Legal Aid Services offices. However, because of severe cutbacks in the funding for their operations, most have had to limit their operations to specific areas such as domestic relations, or landlord-tenant problems. If unable to handle your case, they might be able to refer you to another legal service agency which is not similarly restricted.

Some law schools have programs designed to offer legal services to the community. In such a project, you may be assisted by law students working under the supervision of an attorney. Fees are often imposed on the client for such service, but they are generally significantly lower than fees charged by private attorneys.

If you are working, it is not likely that you will be able to secure free or very low cost legal services. However, if you clearly document your situation and organize your materials prior to asking for assistance, it is more likely that you will be able to secure some assistance. It is also possible that you can do some of your own clerical work, investigation, and/or research, which will lessen your legal costs. Be prepared to be an advocate for yourself in obtaining assistance, but do not be disappointed if you find your only alternative is to commit your own personal resources to obtaining legal services.

An Overview of Government Complaint Agencies

There are several government agencies which process formal complaints. Each will be discussed more fully below. The following section presents an overview of these agencies.

The Equal Employment Opportunity Commission (EEOC) is the federal agency responsible for enforcing Title VII of the 1964 Civil Rights Act, the federal law which outlaws discrimination in employment on the basis of sex, race, age, religion and national origin. You may file a complaint with EEOC if you work for an employer with 15 or more employees.

Another federal agency that handles sexual harassment complaints is the Office for Civil Rights (OCR), which enforces Title IX of the Education Amendments of 1972. If you have been sexually harassed as a student or an employee of any educational institution's program receiving federal financial assistance, you may file a complaint with the OCR.

The United States Department of Labor's Office of Federal Contract Compliance (OFCC) is responsible for enforcing Executive Order 11246, as amended, which forbids discrimination in employment by federal contractors and requires them to take affirmative action in hiring, promotion, pay and training programs for women and minorities.

The National Labor Relations Board (NLRB) is the federal agency which regulates relationships between employees, private employers and unions under the authority of the Labor Management Relations Act and enforces the National Labor Relations Act. It covers most *non-supervisory* employees in non-governmental jobs.

The United States Housing and Urban Development Office handles cases under Title VIII of the Federal Fair Housing Act. Sexual harassment is considered actionable under Title VIII and complaints can be filed for sexual harassment perpetrated by owners, landlords, or managers.

The California Department of Fair Employment and Housing (DFEH), which prosecutes cases before the Fair Employment and Housing Commission (FEHC), both established under the Fair Employment and Housing Act (FEHA), handle harassment complaints involving housing accommodations and in public accommodations of California private businesses and public entities, regardless of their size, and in the area of employment, against employers of any size.

The California State Personnel Board (SPB) has constitutional and statutory authority to investigate and adjudicate complaints of discrimination from California state civil service employees. The California Supreme Court has decided that both the FEHC and the SPB may adjudicate employment discrimination complaints of state employees. (See *SPB* v. *FEHC* (1985) 39 Cal.3d 422.)

Further, public employees are required to file with a tort claims agency, such as the State Board of Control, in order to put the state (or local governmental entity) on notice of the claim.

Another administrative avenue through which to proceed is a local human rights commission. Many handle employment as well as housing discrimination complaints at the local level.

If you leave your job or are fired because of sexual harassment, you may file an unemployment insurance claim. You can seek assistance from the Unemployment Insurance program, which is administered by the California Employment Development Department (EDD).

You may be eligible for worker's compensation if you suffer from medical or physical disorders caused by harassment in employment.

For more information about filing complaints with these agencies and commissions, please see the detailed sections which follow on using the administrative/legal system.

Chapter III

ALTERNATIVES TO THE ADMINISTRATIVE/LEGAL SYSTEMS

An Overview of Alternatives

It is unlikely that you will, in the midst of an encounter with a sexual harasser, be thinking about how the law would deal with this incident or condition. You just want the behavior to stop or the condition to change. There are times, however, when an understanding of the available legal relief may prove quite useful.

One of those times is when you have been harmed in some tangible way by the sexual harassment. If you have lost your job, have been turned down for a promotion, have not been admitted to a particular apartment, school or program, or have abandoned a job or program because of harassment, you may want to seek a legal remedy for the harm you have suffered. Although it may be impossible to identify a concrete or economic harm, you may want to obtain a court order specifically prohibiting sexual harassment or prohibiting the continuation of an oppressive working or educational environment. Also, even though no tangible job loss was experienced, you may still seek compensatory and/or punitive damages. You may also want to seek compensation for invasion of your rights or emotional distress. Finally, you may want to convince your employer, union or school to adopt a particular method of preventing sexual harassment. Any business or organization is more likely to attempt to prevent sexual harassment or to take corrective actions if the costs of sexual harassment are clearly outlined.

There are a variety of contexts in which the law can be used to prevent or halt sexual harassment and each carries its own particular set of remedies. You may decide that none of the remedies offered is appropriate in your situation, and that you want to try an alternative approach to solving the problem. Since legal remedies are only available at the end of what is all too often a long and very expensive process, you should not be shy about trying less formal methods of discouraging harassment. However, you need to know available options in order to decide whether to try an alternative, to take the administrative/legal route or to pursue both types of strategies.

If you decide not to file a formal complaint through the employer, union, court, state or federal agency, it is still important to resolve your experience of sexual harassment. The remainder of this section outlines some alternatives available for dealing with the sexual harassment experience.

For example, instead of filing a complaint you may want to do any or all of the following:

- Write a letter to the harasser (see letter writing section).
- Threaten to expose the harasser's conduct by informing the employer, the harasser's family, friends, etc. You may also consider following through by discussing the conduct with any of the above. Remember such conduct can lead to charges of defamation. Be sure your statements are true and accurate.
- Stage a confrontation with the harasser. This technique has been successfully used with rapists. A confrontation is well-organized, scripted, carefully planned action whereby a group of persons accompanied by the "victim" meet the harasser generally in a public place and acknowledge his harassing conduct, letting him know he is being watched and that all are aware of his inappropriate behavior. This should only be done in coordination with persons familiar with the process who can advise participants on the technical aspects and legal ramifications. You may obtain more information on the process through Santa Cruz Women Against Rape, P. O. Box 711, Santa Cruz, CA 95061 (408) 426-7273 by viewing a film on confrontation produced and distributed by Iris Films, P.O. Box 5353, Berkeley, CA 94705 (415) 549-3192.
- Stage a boycott, strike, sit-in, a picket line, or other organized protest to force the agency to take action and acknowledge the existence of the harassment problem.
- Work with your union, other employee or advocacy organizations, and/or your employer or school, etc., directly, to assist in establishing prevention mechanisms (see prevention section).
- Work with community agencies and churches to design and implement education and prevention programs (see prevention and finding supportive community resources sections).
- Use the media to publicize the problem (see media section).
- Learn advocacy and/or peer counseling skills to help others deal with the experience (see section on peer counseling support groups).
- Work with your legislators to establish new laws to increase protections against sexual harassment and to streamline procedures for complaint resolution (see sections on calling upon your legislators).
- Work with local public and private schools to assist in informing students, parents, and the administration about the problem of sexual harass-

ment, to enforce non-discrimination in the school systems, and to educate students about their rights as future workers.

- Call local or state law enforcement agencies to anonymously report violations of law under the whistle-blowing statutes. For example under Government Code sections 10540–10547 and 19683, a state employee may disclose improper governmental activities to the State Auditor General's Office and receive protection against retaliation for making such a report.
- Take a self-defense class, assertiveness training course, stress reduction workshop, etc. to assist in regaining your personal power and self-confidence.
- Seek counseling from a professional therapist (see counseling section).
- Transfer to a different work site, class, campus, etc.
- Find a new job, apartment, neighborhood, etc.
- Take appropriate measures to regain your right to privacy such as changing and unlisting your phone number. Remember that the address used for voter registration, vehicle registration and licensing is a public record and can be obtained by anyone with relative ease.

WRITING A LETTER TO THE SEXUAL HARASSER: ANOTHER WAY OF DEALING WITH THE PROBLEM *

Bernice R. Sandler, Executive Director

(This paper is based in large measure upon a paper written by Mary P. Rowe, a labor economist who is special assistant to the president of the Massachusetts Institute of Technology. Her article, entitled, "Dealing with Sexual Harassment," appeared in the May–June 1981 issue of the Harvard Business Review, and dealt with harassment of employees. However, the principles and techniques Rowe developed can be used by others as well. Among other things, her article explains the ways in which a letter written by the victim to the harasser can be of benefit to both, and often brings an end to the harassment. Many of the examples and conceptualizations are from Rowe's article, as well as the idea of the letter itself. Rowe reviewed this paper and provided invaluable assistance to the writer.)

Sexual harassment has become an issue of increasing concern on the nation's campuses during the last few years, especially as it became clear that both Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 prohibited sexual harassment of employees and students.[1] Some professors have been fired, others censured or "encouraged" to resign.[2] Staff and administration officers have not been immune—at least two presidents left their position because they were charged with sexual harassment. Institutions as well as individuals have been sued—sometimes for several million dollars.[3]

Institutions have been responding by developing policies prohibiting sexual harassment and procedures to deal with complaints. Much has been written about questions of due process, confidentiality, evaluation of evidence, etc.—questions which arise when formal charges are being considered. Little has been written about how to deal with the issue when complaints first come to light whether prior to the filing of a charge or when the person who has been harassed prefers not to file a charge. The latter category includes the vast majority of victims—possibly 99 percent, according to Rowe. This paper examines one method of dealing with student complaints of sexual harassment—writing a specific kind of letter to the harasser.[4]

One of the most striking aspects of sexual harassment is that the victim feels quite powerless in the situation. Students rely on professors not only for grades, but for future recommendations as well as academic and career opportunities. In a very real sense, a female student's life chances are at stake. If she[5] complains openly, she might face retaliation which could indeed affect her future. Moreover, she is often fearful of being branded a "trouble maker" if she files formal charges, knowing (in the usual case) that she has no conclusive proof. She usually will worry that she won't be believed, or that she may be blamed by her parents and others for what has occurred. Additionally, she usually has tried stoically to handle the incident(s) by ignoring it,[6] by mentioning that she feels helpless in the face of behaviors which make her uncomfortable or deeply upset.

However, when the victim comes to another member of the academic community for help and advice, she can be encouraged to write the alleged harasser a specific kind of letter especially if a plain request to stop has been ignored. Writing a letter about the harassment helps the victim handle it herself—by taking an active role, she gains a sense of being in charge of what is "happening" to her—she is in control of her own destiny.

The letter itself is best described as polite, low-key and detailed. Several drafts may be necessary because victims are rightly angry and often understandably upset. The letter should consist of three parts:

Part I tells the facts of what has happened, without evaluation, as seen by the writer. It should be as detailed and as precise as possible, with dates (or approximate dates), places, and a description of the incidents the writer has experienced with that person:

> "On December 15, 1982 when I met you for a conference about my work, you asked me to come to your house that evening and said it would 'help' my grades."
>
> "Several times this semester when I have talked to you after class you put your arm around me and rubbed my back. Once you also tried to fondle my breast."
>
> "Last week at the department party you asked me to go to bed with you."

Part II describes how the writer feels about the events described in Part I, such as dismay, misery, distrust, or revulsion, and includes the writer's opinions or thoughts about what happened:

> "I am embarrassed when I see you."
>
> "My stomach turns to knots when I come to class."
>
> "I cannot believe that you are able to grade my work fairly."
>
> "It's hard for me to sleep at night; I've lost ten pounds."

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* This paper is part of a packet of seven papers on sexual harassment, available for $5.00 from the Project on the Status and Education of Women, Association of American Colleges, 1818 R Street, NW, Washington, DC 20009. Reprinted with permission.

"This is the worst thing that has ever happened to me."
"You have made me think about transferring from the field of my choice."
"It has become very difficult for me to concentrate on my work."

Part III consists of what the writer wants to happen next. This part may be very short, since most writers usually just want the behavior to stop:

"I want our relationship to be purely professional from now on."
"I don't ever want you to touch me again or to make remarks about my sexuality."

If the writer believes a remedy is necessary, it would be included in Part III:

"Please withdraw my last evaluation until we can work out a fair one."
"I will need a written answer as to the reference you will provide from now on."

Rowe suggests that if the writer had contributed to a possible misunderstanding she might acknowledge it:

"Although we once were happy dating, it is important to me that we now re-establish a professional relationship, and I ask you to do so."

The letter should be delivered either in person or by registered or certified mail. Rowe suggests that where necessary a plainclothes police officer, security guard, or other protector and/or witness could accompany the writer or arrange to be present when the letter is delivered. (The person accompanying or arranging for delivery does not need to know what is being delivered.)

The writer should keep at least one copy of the letter for herself but, in the usual case, not send copies to other people. Should the letter fail to achieve its purpose—a rarity, according to Rowe—the letter can later be used in support of a formal complaint or lawsuit. However, in most instances, the recipient usually says nothing but does change his behavior. Sometimes he may apologize or offer to discuss the matter, or occasionally, deny the allegations. Rowe states that the recipient rarely writes back; the cessation of sexual harassment is the more usual result.

In many instances, the recipient of the letter is often astonished that his behavior is viewed in the way the writer sees it. He may also be fearful of a formal charge, and worry about who else has seen the letter. The letter also seems to be extraordinarily more powerful than a verbal exchange—even harassers who may have ignored verbal requests to stop, respond differently when the same request is put into writing. In any event, and for whatever reason, the letter often works.

ADVANTAGES OF LETTER WRITING

In addition to helping the victim regain a sense of being in control of the situation, the use of a letter in this situation has numerous other advantages:

- At this stage, it is not necessary to address questions such as legality, confidentiality, evidence, and due process. Indeed, when the letter is successful in stopping the harrassment, these questions may not need to be addressed at all.
- It keeps the incident(s) quiet. The victim's fear of exposure is minimized; she doesn't have to worry about her reputation—as a "trouble maker," as someone who "couldn't handle it," or as someone who "caused it." (The exposure issue is raised by virtually all victims.)
- It often avoids formal charges and a public confrontation. By keeping the incident between the victim and the harasser, the institution does not need to be formally involved (although hopefully agents of the institution have been involved informally by helping the victim to write the letter). Rowe points out that third party intervention is not as useful in sexual harassment as in other kinds of disputes, and in fact, may often make things worse for the victim.
- It provides the harasser with a new perspective on his behavior. Sometimes such people have no idea how their behavior may be affecting others.
- It may minimize or prevent retaliation against the writer.

The chief reason to use the letter, according to Rowe, is "that it is the only method that usually works and at little 'cost'." She also explains the following advantages to individual action supported by the institution as contrasted with overt institutional intervention:

The aims of the individual action are:

- To give the offended and offender a chance, usually for the first time, to see things the same way. Since neither person may have any understanding of how the other sees the problem, discussion may help. Entry of a third party at this step usually further polarizes the views of the opposing persons.
- To give those who are wrongly accused the chance to defend themselves.
- To give those who are correctly, or to some extent correctly, accused the chance to make amends. (This may not be possible in serious cases.)
- To provide some evidence of the offense, since usually there is no substantive evidence at all. This step is vital if management or the courts must later take action.
- To give aggressors who do not understand what they were doing a fair warning, if this is appropriate.

- To provide the offended employee a chance to get the harassment stopped without provoking public counterattack, experiencing public embarrassment, harming third parties, damaging the company's reputation, or causing the aggressor to lose face . . . [T]hese points are almost always considered important by the aggrieved person.
- To provide offended persons a way to demonstrate that they tried all reasonable means to get the offender to stop. This step may be convincing later to supervisors, spouses, and others who become involved.
- To encourage ambivalent complainants, as well as those who have inadvertently given misunderstood signals, to present a consistent and clear message.
- To encourage those who exaggerate to be more responsible.[7]

Most importantly, the letter can be an important tool for actually ending sexual harassment, and in fact, any kind of harassment.

The letter ought not be used as a substitute for effective policies and grievance procedures which are critical in forming a supportive framework within which the victim can help herself. Many feel that having a tough policy enormously supports the effectiveness of the letter method. It has, however, been effectively used in situations where there was no policy or procedures.

The letter must be voluntary; it must not be used when the victim is unable or unwilling to write it. Institutions can encourage victims to do so, but some may be too upset or frightened.

These individuals as well as others will need a sympathetic person to talk with who can also provide them with various options. Several institutions have publicized the names of campus personnel who will talk to persons who believe that they have been sexually harassed. These designated persons—usually deans, certain members of the faculty, counselors, and others—might want to consider advising that the victim communicate a very firm "no" to the harasser and/or use a letter as a first stage approach to handling the problem, as well as providing some advice about the form of the letter, where appropriate. Individuals should be advised to keep a log of events and their feelings prior to writing the letter. Taking action, whether keeping a log, talking about the incident, writing a letter, using grievance procedures, or filing other formal charges, helps the victims regain a sense of dignity about themselves.

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[1] Title VII prohibits employment discrimination on the basis of race, color, religion, national origin, and sex, and covers virtually all educational institutions. Title IX prohibits sex discrimination against students and employees in educational institutions receiving federal assistance. Information about coverage of sexual harassment by these laws, along with other information is contained in a packet of five articles published by the Project on the Status and Education of Women. The packet is available for $2.00 from the Project, 1818 R Street, NW, Washington, DC 20009.

[2] See *Selected Articles on Sexual Harassment from On Campus with Women*, included in packet mentioned above.

[3] Ibid.

[4] The method is also appropriate for faculty and staff who have been sexually harassed by colleagues or supervisors and also works for other kinds of interpersonal difficulties with all kinds of harassment.

[5] Because most victims of sexual harassment are female, and most harassers are male, this paper uses the female pronouns for victims and male pronouns for harassers. However, the laws prohibiting sexual harassment protect both sexes equally, and the paper is equally applicable to cases of males being harassed.

[6] Several studies note that ignoring sexual harassment is usually ineffective; in fact, it may inadvertently act to increase the behavior.

[7] Mary Rowe, "Dealing with Sexual Harassment," *Harvard Business Reveiw*, May–June 1981, p. 43 (also p. 2 of Reprint 81339).

Using the Media

Know the Media in Your Community

Newspapers, radio, and television stations are businesses for which air time and space are money; both are limited. Evaluate what you read, see, and hear to determine which station, which program, which reporter or columnist, or which format is most likely to be receptive to you.

Compile a list of media contacts. Make notes about which outlets used your material and how. Know the difference between newspaper editors and reporters; between managers, program directors, news directors, reporters, and public service directors—and learn the appropriate times to contact each.

Don't hesitate to ask questions about deadlines and preferred formats. Once you have this information, never forget it. Information that is properly formatted and delivered in plenty of time is more likely to be used. It also creates a good image. A weekly newspaper that is published on Wednesday should never be contacted on Tuesday, especially if you can wait until Thursday. Radio and television stations should be contacted in the morning whenever possible; ex-

pect short shrift if you call a TV newsroom during the late afternoon rush to put together the 5 p.m. news.

Know How To Package Your Information

Just as with complaint documentation, the basics of a news story are who, what, where, when, and why. If you cover those points, you have given most news outlets what they need to know. It is preferable to keep your press releases short and to the point; if a reporter needs more information, you will be called.

Since time is money, a three-page, single-spaced press release is more likely to be thrown away than edited. If you write the most important information first, it makes it easier for a newspaper or station to shorten your material without extensive rewriting or dropping something critical.

Public service announcements also need to be written properly. Seek the advice of a radio or television station's public service director. Remember that public service time is limited, and that to compete with the hundreds of other PSA's a station receives—to say nothing of the regular commercials—your copy should be easy to read, clear, and snappy.

Know Your Role

If you are being interviewed, keep your answers pointed and brief. If a reporter needs more information, he or she will ask for it. Collect your thoughts before you answer a question, and try to make your response as brief as you can. Don't be afraid to say "I don't know." A rambling made-up answer is obvious; a straightforward admission of ignorance allows the reporter to move on to other questions. Keep your answers general and non-technical, unless more detailed information is specifically requested. A print reporter is more likely to have time for detailed explanations than one from the electronic media.

When you talk to anyone from the media, establish from the outset whether your remarks are on the record or off. If you want to say something but do not want to be quoted, make that clear.

Never fail to return a reporter's call, particularly if he or she is on deadline. Call even if only to say that you can't talk or don't have the information requested.

A good working relationship with the media takes time to develop, and it begins with courtesy and politeness. It is a reciprocal relationship—if you have an important story, you help a reporter do his or her job. If they tell your story, you are reaching your community in a very effective way.

Calling Upon Your Legislators

If you have found the current law to be an inadequate protection against harassment in your specific situation, you might consider working for a change in the law. Changing the law is a long, arduous process, but a process that can be the most satisfactory.

Your first step is to get someone interested in your situation. The most logical legislator would be the person who represents you in the State Assembly or Senate. You may also want to contact your local city or county representative, or your U.S. Congress Representative or Senator depending on whether you wish to propose local ordinances or federal statutes. Go to them or to their staff person with your problem. If you have a solution, it will be easier to market it if it is already in writing. Think through exactly what you want changed and how it could best be accomplished.

The most important thing is to do your homework. Know in advance what arguments will be raised against your proposal, and who will raise them. If you take the time to meet with potential opponents in advance, it is often possible to short-circuit their opposition, or to negotiate a mutually agreeable compromise, which fulfills your original goal, but eliminates their opposition.

If you take the specific language for the bill to your legislator and offer to lend full support, s/he is more likely to look favorably upon your proposal. Your proposal is likely to be only one of many proposals the legislator is carrying in any given year.

The legislative process takes time. Once introduced, a bill must pass a policy committee (e.g., Assembly Labor and Employment or Senate Judiciary) in its house of origin. Before going to a vote of the full house of origin, it may also be required to pass a fiscal committee, if there are potential fiscal implications. Once a bill has passed its house of origin, the process is repeated in the other house.

It is important to give staff (both the author's staff and the committee staff) the assistance and information they need. Be prepared to provide good background information on why the bill is needed, how the change will help women, and other access to information that may help your bill. Such information is often not readily available to others who may not be familiar with the problems. If legislative consultants and staff can rely upon you to bring them good information, analyses drafted reflecting your background information can often be more favorable than those without your input.

Seek support for your legislation from local groups and organizations having an interest in the issue of sexual harrassment. Some organizations have lobbyists on staff who can be tremendously helpful at committee hearings. Letters from individuals, groups, and organizations to committee members and the bill sponsor are persuasive.

Tracking your bills, monitoring their progress, lobbying on their behalf, negotiating compromise amendments, following up with supporters, and testifying at committee hearings when necessary is a constant "hurry up and wait" process. However, with work and perseverance, you may see your pro-

posal become law. Such an outcome is truly exciting because *you* have made a difference.

Successful Self-Help Stories

1. A woman who was raped while on a date later saw an announcement of this man's engagement. On his wedding day, the rapist-date-turned-bridegroom was met at the church by a picket line of women carrying protest signs which identified him as a rapist.
2. Members of a west coast "rape squad" came to the aid of a woman who was being constantly followed by her neighbor; squad members simply followed the neighbor, effectively intimidating the man into a change of behavior.
3. Doctors, dentists, psychiatrists, professors and other professionals who have repeatedly been accused of molestation, sexual harassment or rape by their clients/students, have had red X's or the word RAPIST painted on their office doors to warn other female clients/students. One Vancouver group posted warning signs near the business office of a dentist repeatedly accused of molesting female patients.
4. A network of women in one city dubbed themselves a "Pervert Control Center" and used telephone "guerilla tactics" against male obscene phone callers. Their first target was a man who had falsely advertised an apartment for rent and then had subjected women interested in renting the space to telephone interviews about their sex lives. The group subsequently placed their own newspaper ad: "Neurotic man enjoys abusive calls from women, especially in the wee hours of the morning" and gave his name and number. The ad worked. Within days the man had to have his number changed. When contacted for comment he begged a group member to stop the calls.

TABLE 2
A SUMMARY OF POTENTIAL ADMINISTRATIVE/LEGAL ACTIONS AVAILABLE IN RESOLVING SEXUAL HARASSMENT IN VARIOUS ENVIRONMENTS[1]

THE SEXUAL HARASSMENT ENVIRONMENT

POTENTIAL ACTION AND/OR REMEDY[2]	EMPLOYMENT CONTEXT					EDUCATION CONTEXT		Housing Context	Prison Context	Business Establishment and Public Accommodations	Military Context	Recipients of Government Benefits
	Private Employee or Applicant	Employee of Federal Contractor	Federal Employee	State Civil Service	Other Public Employees	Student	Teachers/ Professors					
FEDERAL												
TITLE VII (42 U.S.C. Section 2000e (et seq.) File with EEOC within 300 days in CA[3] if you work for an employer with at least 15 employees.	X	X		X	X		X					
TITLE VIII of the Fair Housing Act (42 U.S.C. Section 3601-3619). File with HUD within 180 days of harassment incident.								X				
EXECUTIVE ORDER 11246 as amended. File with DOL OFCCP within 180 days of last incident of sexual harassment in employment by a federal contractor with at least 50 employees and at least a $50,000.00 contract.		X										
TITLE IX (20 U.S.C. Section 1681). File with OCR within 180 days of sexual harassment incident or within 60 days of completion of grievance procedure.						X	X					
42 U.S.C. SECTION 1983 ACTION. A cause of action for sexual harassment by any person acting under government authority. (Note, attorneys' fees may be recovered for a Section 1983 action under the authority of Section 1988.)			X	X	X							
EXTRAORDINARY WRIT OF HABEAS CORPUS File to obtain a declaration and the enforcement of a prisoner's right to be free from sexual harassment.									X			
UNITED STATES CONSTITUTION[4]												
First Amendment Right to Privacy	X	X	X	X	X				X			
Fourth Amendment Right to be Free From Unreasonable Searches and Seizures									X			
Fifth and Fourteenth Amendment Rights to Equal Protection			X	X	X				X			
Eighth Amendment Right To Be Free From Cruel and Unusual Punishment									X			
NLRB UNFAIR LABOR PRACTICE CHARGE Action by Union Member for violation of Labor Management Relations Act (29 U.S.C. Section 141 et seq.). File with NLRB within six months of unfair labor practice:												
Against Employer	X	X					X					
Against Union	X	X					X					
FEDERAL EMPLOYMENT INTERNAL COMPLAINT PROCESS Federal employees file with department or agency EEO Counselor within 30 days of sexual harassment incident or consequence.			X									

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POTENTIAL ACTION AND/OR REMEDY	EMPLOYMENT CONTEXT					EDUCATION CONTEXT						
	Private Employee or Applicant	Employee of Federal Contractor	Federal Employee	State Civil Service	Other Public Employees	Student	Teachers/ Professors	Housing Context	Prison Context	Business Establishment and Public Accommodations	Military Context	Recipients of Government Benefits
FEDERAL EMPLOYEES' COMPENSATION ACT (5 U.S.C. Sections 7902, 8101 et seq.; 18 U.S.C. Sections 292, 1920 et seq. See also 41 U.S.C. Section 351 for coverage of service contract employees.) Provide written notice of injury to immediate supervisor within 30 days of injury (see Section 8119). File claim for compensation in writing to Secretary of Labor or designate within three years of injury.			X									
FEDERAL TORT CLAIMS ACT (28 U.S.C. Sections 2671 et seq. and 1346b.) Claims against a federal agency, not employee of the federal government (including the military), who harasses a person while acting within the scope of his/her office or employment.			X						X		X	X
STATE (California)[5] CALIFORNIA CONSTITUTION ARTICLE 1 SECTION 8 prohibits the disqualification of a person from entering or pursuing a business, profession, vocation, or employment because of sex...	X			X	X	X	X					
FAIR EMPLOYMENT AND HOUSING ACT (Gov. Code Section 12900 et seq.). File with DFEH within one year of last harassment in employment for sexual harassment, retaliation, and failure to take all reasonable steps necessary to prevent discrimination and harassment. (See Section 12955 et seq..)	X	X		X	X		X					
FAIR EMPLOYMENT AND HOUSING ACT (as above). File with DFEH within 60 days of last harassment in housing accommodation. (See Section 12955 et seq..)								X				
CALIFORNIA TORT CLAIMS ACT (Gov. Code Section 900 et seq.). If filing a lawsuit against state or other covered public entity, file with BOC within 100 days to overcome sovereign immunity for other than discrimination causes of action.				X	X	Public School X	Public School X		X			X
UNRUH CIVIL RIGHTS ACT (Civil Code Section 51). File with DFEH within one year from last harassment incident in housing, any public accommodation, or business establishment (e.g., rentals, restaurants, stores, condominiums, hotels, theatres), or file with Superior Court within three years.								X		X		
WORKERS'S COMPENSATION (Disability) (Labor Code Section 3200 et seq.— see Sections 3600 for essential conditions and 5500 for application procedure; See also Workers Compensation Appeals Boards' Rules of Practice and Procedure). Notify employer within 30 days of injury. File claim no later than one year after injury.	X	X		X	X		X					

POTENTIAL ACTION AND/OR REMEDY	EMPLOYMENT CONTEXT					EDUCATION CONTEXT						Recipients of Government Benefits
	Private Employee or Applicant	Employee of Federal Contractor	Federal Employee	State Civil Service	Other Public Employees	Student	Teachers/ Professors	Housing Context	Prison Context	Business Establishment and Public Accommodations	Military Context	
UNEMPLOYMENT INSURANCE (Unempl. Ins. Code Section 1256.7). File with local EDD office within one week of termination if left the job because of harassment or were fired for refusal to submit to sexual demands.	X	X		X	X		X					
CALIFORNIA "TITLE IX"--SEX EQUITY IN EDUCATION ACT (Education Code Section 200 et seq.). Check with local governing school district.						X	X					
CALIFORNIA RALPH ACT (Civil Code Secton 51.7). File with DFEH within one year or with Superior Court within 3 years of last act of violence or intimidation by threat of violence involving sexual demands.	X	X		X	X	X	X	X		X		X
CALIFORNIA CIVIL HARASSMENT LAW TO OBTAIN INJUNCTIVE RELIEF (Code of Civil Procedure Section 527.6). File with Superior Court during the harassment to seek injunctive relief against ongoing harassment or threat of harassment which creates substantial emotional distress.	X	X		X	X	X	X	X		X		X
CALIFORNIA STATE EMPLOYER-EMPLOYEE RELATIONS ACT (Gov. Code Section 3512 et seq.). File with PERB within six months a charge against your union for failure to represent you on a discrimination complaint.				Represented employees X								
[illegible] PROCEDURE (Union, employer, or school). Check contract or policy for filing deadline and procedure.	X	X			X	X	X					
CALIFORNIA STATE CIVIL SERVICE PROCEDURE. File with appointing authority (or with SPB in cases of direct appeal) within 30 days of incident under Gov. Code Section 19702 and SPB Rules 64 and 547.				X								
LOCAL CIVIL OR HUMAN RIGHTS ORDINANCES. Check city or county government offices for relevant ordinances or charter provisions and usually file with local enforcement office.	X	X		X	X		X	X		X		X
CALIFORNIA PRISON ADMINISTRATIVE COMPLAINT PROCEDURE (Form 602) File with prison officials. Appeal to Department of Corrections.									X			
CIVIL LAWSUITS CONTRACT (File in CA within two years for oral contract or four years for written contract): BREACH OF CONTRACT VIOLATION OF NON-DISCRIMINATION PROHIBITIONS BREACH OF UNION'S DUTY OF FAIR REPRESENTATION Action against union for failure to represent a harassed member.	X	X		X	X		X					X

POTENTIAL ACTION AND/OR REMEDY	EMPLOYMENT CONTEXT					EDUCATION CONTEXT						
	Private Employee or Applicant	Employee of Federal Contractor	Federal Employee	State Civil Service	Other Public Employees	Student	Teachers/ Professors	Housing Context	Prison Context	Business Establishment and Public Accommodations	Military Context	Recipients of Government Benefits
TORT (You may have to file within one year): ASSAULT AND/OR BATTERY FALSE IMPRISONMENT INTENTIONAL OR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING INTENTIONAL INTERFERENCE WITH ECONOMIC ADVANTAGE INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS	X	X	May be able to file against individual harasser or involved employees	X	X	X	X	X		X		X
WRONGFUL TERMINATION (Even if fired or had to leave because of harassment) FRAUD OR MISREPRESENTATION OF TERMS AND CONDITIONS OF EMPLOYMENT	X	X		X	X		X					
DEFAMATION: SLANDER (speech) or LIBEL (writings)	X	X		X	X	X	X	X		X		X
INVASION OF PRIVACY	X	X		X	X	X	X	X	X	X		X
CRIMINAL CHARGES (The actual crime or attempt):[5] [6] RAPE (CA Penal Code Section 261) UNLAWFUL SEXUAL INTERCOURSE - Statutory Rape (Penal Code Section 261.5) RAPE OF SPOUSE (Penal Code Section 262) SEXUAL BATTERY (Penal Code Section 243.4) BATTERY (Penal Code Section 242) ASSAULT (Penal Code Section 240) FALSE IMPRISONMENT (Penal Code Section 236) FORCED SEXUAL ASSAULT INCLUDING SODOMY (Penal Code Section 286) ORAL COPULATION (Penal Code Section 288) ASSAULT WITH INTENT TO COMMIT RAPE, SODOMY OR ORAL COPULATION (Penal Code Secton 220)	X	X		X	X	X	X	X		X		X
VICTIMS OF VIOLENT CRIMES ASSISTANCE PROGRAM: VICTIM WITNESS ASSISTANCE PROGRAMS through the local Offices of the District Attorney as the criminal case is proceeding.	X	X		X	X	X	X	X		X		X
VICTIMS OF VIOLENT CRIMES REIMBURSEMENT PROGRAM - AID TO VICTIMS OF VIOLENT CRIMES (Gov. Code Sections 13950 *et seq.*, and 911.2). File claim with BCC within one year of date of injury or death.	X	X		X	X	X	X	X		X		X

[1] NOTE: This summary table was prepared by Mary T. Labrato with the assistance of Anne Staudohl for use in Help Yourself: A Manual For Dealing With Sexual Harassment to be published in the summer of 1986. Thanks are extended to Marian Johnston and Carolyn Langenkamp for their review of the material.

[2] NOTE: Action may be filed against employer, agent, union, coworker, public entity, and/or individual harasser. THESE ARE POTENTIAL ACTIONS AND REMEDIES. The reader is encouraged to research applicable case law before actually pleading any causes of action.

[3] NOTE: Filing deadline may be 180 days in other states. Further, depending upon whether you file first with DFEH or EEOC, you may have to file within 240 days.

[4] NOTE: State constitutions may have analogous protections.

[5] NOTE: Many states have similar protections and administrative agencies for handling complaints.

[6] NOTE: States vary with respect to proscribed conduct.

Sexual Harassment on the Job—Federal Law

The most important federal protection against sexual harassment on the job is *Title VII of the Civil Rights Act of 1964*, as amended, (42 U.S.C. § 2000e *et seq.*). If you are sexually harassed in the context of your employment, and your employer employs 15 or more people, the EEOC can sue the employer in federal court for a violation of Title VII or supply you with a letter allowing you to sue the employer directly. If the person who harassed you is the employer's "agent" (a supervisory employee), the employer may be responsible regardless of whether you have told the employer or not. (See case law on employment discrimination, *infra*). If the person who harassed you is a co-worker without any supervisory authority, the employer can still be held responsible if that employer knew or had some reason to know that your were being harassed and did nothing about it. The employer may even be held responsible for harassment by non-employees such as delivery persons or customers if the employer encouraged or permitted the harassment. (See Appendix for a copy of the EEOC guidelines on sexual harassment.)

Before you can file a suit against your employer under *Title VII*, you must give the EEOC a chance either to arrange a mutually agreeable settlement between you and your employer or to sue your employer. This is referred to as "exhausting administrative remedies." (See below for information on EEOC and DFEH procedures.) You must file with the EEOC within a certain amount of time after the harassment occurs (usually 240 days). Even if you are not sure whether you wish to take legal action, you should consult an attorney regarding this timeframe.

If and when you do go to court, the court (there is no jury in Title VII cases) is empowered by Congress to award a successful plaintiff reinstatment, back pay, or "any other equitable relief as the court deems appropriate." (42 U.S.C. § 2000e-5(g).) The same remedies are available if EEOC handles the complaint.

If Fired

If you were fired from your job because you refused your boss's sexual advances, or because you filed a complaint with the appropriate agency, the court will generally order the employer to give you your job back, and to pay you the wages you would have earned in the meantime. If you got another job, your earnings on the new job are subtracted from this "back pay" award. Of course, the harassment itself, or the employer's or other employees' attitudes toward you because of it, may have made the job undesirable to you. You do not have to take the job back in order to get back pay from the time you were fired until the time you got a comparable job somewhere else. You may, however, be obligated to seek employment elsewhere to "mitigate" or lessen, your damages.

If Denied a Promotion

If you were denied a promotion because you refused advances, or were passed over in favor of someone who accepted sexual advances, the court can order that you be promoted, unless the employer can prove that you would not have been promoted anyway. You can also get seniority credit as if you had been promoted at the original time, and the extra pay you would have received. If there is no opening for you at the time the lawsuit is over, the employer is not required to make room for you, but will probably be ordered to pay you as if you already had the promotion, and to promote you to that position or a comparable position as soon as one is available.

If Transferred

If you were transferred because of sexual harassment, the court can order your re-transfer as soon as a place is available in your old unit, and if the transfer placed you in a lower-paying job, can order you to be paid the difference between what you earned there and what you would have earned if you had not been transferred. This would apply to other similar situations, such as assignment to a less desirable selling area if you are a salesperson.

If Forced to Leave

If the sexual harassment made your job so difficult that you were forced to quit, the court will treat that as if you had been fired. You must show that the conduct or atmosphere was bad enough that a reasonable person in your position would have found the working conditions intolerable. It is not clear whether you need to prove that the employer intended to force you to quit, but the EEOC has taken the position that it is not necessary to do so. While EEOC interpretations are not the law unless adopted by the court, they are usually taken very seriously by the courts. (*Note*: Under California's non-discrimination in employment statute, you do not need to prove that the employer intended to make you quit, but only that a reasonable person in the employer's position would have realized that the working conditions would lead an employee, under those circumstances, to resign.)

If No "Tangible" Harm

Even if you suffered no "tangible" harm as a result of the harassment, the court may order injunctive relief. This means that the court can order the employer to stop the harassment and to take reasonable steps to make sure that it does not recur. It may mean posting signs at the work place admitting that the employer violated Title VII and stating that the employer intends to prevent any further sexual harass-

ment of any of its employees. (*Note*: Under a new California law, the employer has an affirmative duty to take reasonable steps to prevent sexual harassment, so that the failure to do so might make the employer liable under the state counterpart to Title VII, even if no one has actually been harassed yet.)

Attorney Fees and Costs

If you win your Title VII case, the court can order the employer to pay for your attorney fees and the costs of bringing the lawsuit. Federal courts award fees quite often in Title VII cases, but the award will not be made unless you win and only after the whole lawsuit is over. This means that you, your attorney, or some legal assistance foundation must cover the expenses in the meantime—which could be several years. If the EEOC is bringing suit on your behalf, you will not have much control over the lawsuit, but you will not have to pay for it either. Finally, the courts have decided that there is a right to counsel in Title VII cases.

Exemptions

There are only a few employers who are specifically exempted from Title VII coverage even if they employ 15 or more people. Title VII does not apply if your employer is an Indian tribe or a legitimate private club. Congress is also exempt, but Congressional employees may have other legal remedies. The federal government is exempted from Title VII's definition of "employer," but *is* prohibited by Title VII from engaging in sex discrimination, including sexual harassment. If you are employed by the federal government, the procedures you must follow before filing suit may be very different, but the remedies are the same as under Title VII.

Public Employment, Employment Agencies and Unions

State and local governments and educational institutions are covered employers under the current version of Title VII, and are responsible for sexual harassment of their employees to the same extent as businesses. Further, the employment agency that arranges jobs and interviews for you is also subject to Title VII, whether or not you or anyone pays the agency for such services. Unless your union has fewer that 15 members, it is also covered by Title VII, and may not engage in, encourage, or refuse to discourage sexual harassment.

Other

Other federal laws and regulations prohibit sex discrimination in employment and contain various enforcement procedures, but do not give victims a right to sue the harasser or employer. You should also consider whether the sexual harassment you have suffered (or are suffering) violates either the terms of your employment contract or your union's duty to fairly represent its members (see below).

Sexual Harassment on the Job—State Law

California has taken many steps to give employees protection against sexual harassment. The most important source of protection is the Fair Employment and Housing Act, Cal. Gov. Code §§ 12900 *et seq.* (FEHA). In many ways, the FEHA goes further in protecting employees from sexual harassment than Title VII does, but there have been fewer court decisions under it so there are more unanswered questions about what relief is available under what circumstances. (See Appendix for a copy of the relevant provisions of the FEHA and FEHC regulations concerning sexual harassment.) However, recently in *Monge v. Superior Court* (1986) 176 Cal. App.3d 503 the Court of Appeal reversed (via writ issuance) striking of that portion of the complaint which sought punitive damages pursuant to FEHA provisions. The defendant had argued that the punitive damage prayer was "discretionary" and that the trial court could, therefore, grant a motion to strike it by the defendant. The Court of Appeal, in issuing a writ of mandate, held that what is actually discretionary is the power to assess or withhold an award of damages *after* hearing evidence,—NOT *whether to hear* the matter regarding punitive damages relative to a sexual harassment claim in a properly pleaded case.

As of January 1, 1985, any California employer with one or more employees is prohibited from engaging in sexual harassment, permitting its employees to engage in it, or failing to take reasonable steps to prevent it. For harassment occurring before January 1, 1985, the employer must have had five or more employees in order to be covered under the FEHA.

The Department of Fair Employment and Housing (DFEH) can sue on your behalf before the Fair Employment and Housing Commission, or can allow you to sue in court on your own behalf. All Title VII remedies—reinstatement, back pay, etc.—are available. In addition, if you file a court action under the FEHA you can receive compensatory (generally, out-of-pocket and make-whole damages) and/or punitive (to punish the perpetrator) damages. The Commission's authority to award punitive and compensatory damages is now an issue pending before the state's Supreme Court in the *Dyna-Med* and *Peralta College* cases. (Note: Federal courts have said that compensatory and punitive damages are *not* generally available under Title VII, and no court has awarded them in a Title VII case.)

Compensatory damages are money payments made to you by the employer in order to compensate you for the invasion of your right to be free of sexual harassment. If the Commission believes that you have suffered damage to your dignity and self-es-

teem, humiliation, embarassment, emotional pain or emotional distress, it will order the employer to pay you some amount of money to compensate you for those things. The Commission has made awards in the range of $15,000 to $50,000 in compensatory damages to victims of sexual harassment.

Punitive damages are money payments made to you, by the employer, that are imposed on the employer to punish and to deter further violations in the future by it and others. They are available when the employer is guilty of oppression, malice or fraud, and are in addition to any compensatory damages that may be awarded. The Commission has awarded punitive damages in the range of $25,000 to $100,000 to sexual harassment victims.

Some employers have questioned whether the FEHA really authorizes payment of damages to victims in addition to equitable remedies (back pay, reinstatement, etc.). The California Supreme Court has said that *courts* are authorized to award such damages for violations of the FEHA, but has not yet said whether the *Commission* can make the employer pay you compensatory or punitive damages. Some of the employers who have been ordered by the Commission to pay damages have asked lower courts to strike the damage orders, and have met with mixed results. Because the appeals to the Supreme Court from those decisions have not yet been decided, it is not clear how the conflict will be resolved, but a decision is hoped for by the end of 1986.

(Note: Given the time and expense involved in bringing your own lawsuit, the fact that the employer *may* be able to avoid paying damages *if* awarded by the Commission, may make little difference to you. If monetary damages are a major objective of recovery, you may decide not to ask the DFEH to allow you to bring suit yourself, thus saving the expense of attorney fees and costs. If the uncertainty has been cleared up by the courts at the time you are making your decision, you can take that into account as well.) Ask questions regarding the results the FEHA may provide for you and discuss these concerns before making your decision on how to proceed.

Both the Commission and the courts may order back pay, reinstatement, promotion, and injunctive relief under FEHA, just as federal courts may under Title VII, and can be expected to do so under the same circumstances. The potential for damages in addition to such remedies makes it more likely that an employer will settle (i.e., agree to a compromise) with a plaintiff employee, rather than take the chance that it will be ordered to pay a large punitive damage award.

Sexual Harassment in Education—State Law

California law prohibits sex discrimination in education under various sections of the Education Code (Sections 200 *et seq.*). The most important, and most recent, is the Sex Equity in Education Act. If you are enrolled in or employed by an educational institution, public or private, elementary, secondary or higher which receives any funding from the state or one of its agencies, or whose students receive any state financial aid, you are protected from sexual harassment (as defined in Education Code section 210) by California law. The law is so new that no court cases have been reported interpreting it, but it is likely that California courts will look to the employment case law for ideas on interpretation and remedies.

If, because of the harassment you have suffered, you have lost or abandoned something—such as a place in the school orchestra, a letter in volleyball or completion of a graduate project—you may be able to sue to have these restored. Certainly, you may sue to make the harasser stop the offensive behavior. These remedies, as well as compensatory or punitive damages, when available (see below) may be requested whether or not you have gone through informal or institutional complaint mechanisms. In the educational context, there is no need to exhaust administrative remedies before going to court.

Many times, tangible loss is difficult to prove or measure where the foregone opportunity might lead the victim to leave school or change programs. Nevertheless, monetary compensation might be another alternative. The amount of money awarded may be limited, however, by state laws granting the state and its employees, when working in their official capacities, immunity from suit. Lawsuits for monetary compensation under the California Education Code have not been filed in court yet.

Finally, although requests for remedies may include discipline of the harasser, it is not clear to what extent courts will defer to a school's own determination whether discipline of a faculty or staff member is appropriate.

Each school or college district is also mandated to take affirmative steps to educate about and prevent sexual harassment in their districts.

Cases may be brought to the court by you as an individual or by a group of you in a class action.

(Note: If you are an employee of an educational facility in addition to or instead of being a student, you can *also* claim the remedies available in the previous section discussing the employment context.)

Sexual Harassment In Education—Federal Law

Remedies under the federal law barring sex discrimination (and, therefore, sexual harassment) in education are limited by several factors.

First, the Federal Supreme Court recently ruled in *Grove City College* v. *Bell* (1984)___ U.S. ___ (52 U.S.L.W. 4283, 33 E.P.D. ¶ 34, 158) that Title IX of the Education Amendments of 1972 (20 U.S.C. 1681) only applies to a specific program or activity receiving federal funding. This means that if you are being harassed by a professor in your chemistry lab, but no federal monies go to your chemistry program, you cannot sue under *federal* law (you are still covered by state law).

It is not completely clear at this time how the courts will interpret this limitation. For example, the chemistry building may have been built with federal money, or the professor may be receiving federal research grants. Whether that is sufficient to allow suit has not yet been decided. It is clear, however, that if the *only* federal funds involved are student financial aid, Title IX would apply only to the financial aid program, and not to your chemistry professor, even if some of the students on financial aid take chemistry classes.

Secondly, your compensation may be limited to orders to the school or individual to reinstate you in a program or to stop the harassing behavior.

The payment of money damages by the federal government or its agencies is limited to those statutes which specifically allow the payment of money —Title IX does not. However, in some cases, federal employees can be sued as individuals if you can show that they knew about the harassment and knew it violated the law.

State schools and districts, when they are heavily controlled and funded by the state are generally immune from money damages, such as loss of income or back pay. State employees are also protected from suit as individuals, except in rare cases.

Local schools and districts may be sued for money damages under Title IX or the federal Constitution, but only to compensate for loss. No punitive damages are allowed.

Business And Housing

Overview

California has two laws which cover housing discrimination, the Fair Employment and Housing Act (FEHA) and the Unruh Civil Rights Act (Unruh). (Government Code sections 12948, 12955 and Civil Code section 51, respectively). Both are administered by the Department of Fair Employment and Housing (DFEH), but complainants also have the option of filing Unruh complaints directly in court and FEHA complaints in court after exhausting administrative remedies. The FEHA requires the filing of a complaint with the DFEH as a legal prerequisite to resorting to the courts. Available remedies are the same whether they are sought through the DFEH or the courts. The DFEH accepts, investigates, and processes complaints in virtually the same manner as it does complaints of employment discrimination.

Complainants filing with the DFEH under the FEHA are required, by law, to waive their rights under the Unruh Act as a prerequisite to receiving an administative remedy under the FEHA. Both the FEHA and the Unruh Act explicitly prohibit discrimination based on race, sex, color, religion, national orgin, and ancestry. If you are in more than one protected category, it is a good idea to file on every basis under which you may be covered (e.g. race and sex). The FEHA also prohibits marital status discrimination and Unruh, generally, also prohibits age discrimination. The Unruh Act has been interpreted by the State Supreme Court to prohibit any discrimination based on a classification which is arbitrary and unreasonable (In *Re Cox* (1970) 3 Cal. 3d 205). Thus, for example, although sexual orientation is not an enumerated basis given protected status, an individual could nonetheless file a complaint on this basis by showing that she was discriminated against because of her sexual orientation and that this status was arbitrary and not reasonably related to the adverse act she suffered. The FEHA prohibits conduct such as discriminatory rental, sale, lease, eviction, advertising and financing of housing accommodations, as well as harassment and retaliation. The FEHA excludes from its coverage those housing accommodations in which the owner rents out only one room within his/her own home. The Unruh Act covers not only housing, but discrimination in all public accommodations (e.g. restaurants, stores, theatres, hotels) as well.

Sexual harassment is likely to be illegal under Unruh which forbids discrimination by business establishments against their patrons. Courts have defined the term "business establishment" very broadly so that condominium associations, landlords, restaurant owners, and any providers of public accommodations are included.

With respect to the application of the Unruh Act to all businesses of "any kind whatsoever," see *Isbister* v. *Boys' Club of Santa Cruz, Inc.* (1985) 40 Cal.3d 72, holding that Unruh even reaches private, non-profit, non-governmental funded business establishments such as, here, female admission to a privately funded boys' club. (cf., *Rotary Club of Duarte* v. *Rotary International.* (1986) ___Cal.App.3d ___ (86 Daily Journal D.A.R. 870), (violation of Unruh found for exclusion of women from Rotary Club membership.) Thus, Unruh could probably be cited/invoked against a policy of a restaurant/bar to admit only females who are accompanied by a male escort, etc.

Although sexual harassment has not been specifically found to constitute sex discrimination under this Act, it is likely courts would follow this interpretation because of other specific legislation. Thus, if you are sexually harassed in a restaurant, you have a legal right to file an Unruh complaint on this basis. Or, if a potential landlord (for instance) says you are the lucky tenant who can have that wonderful vacant apartment if you'll only provide a few sexual favors, that landlord may be liable under the Unruh Act. Remedies include actual damages plus punitive damages up to three times the actual damages, in no case less than $250. Where there has been violence, such as a battery, a business may incur an additional $10,000 liability.

Claims of sexual harassment occurring in the housing context are analyzed in much the same manner as in employment cases. To date, the Fair Employment and Housing Commission (FEHC) has not yet issued any sexual harassment housing discrimination decisions, but there is no reason to believe analysis of these cases would be any different than in the employment setting. Where the owner or its agent (e.g. manager of apartment building or rental company) engages in sexual harassment either as a condition for obtaining housing, or while the individual resides there, the owner and/or agent will be found liable for engaging in harassment which is "causally connected" (factually related to) to some overt adverse act which is done because of the complainant's response (e.g. rejection) to the harassment (e.g. eviction because she refuses the advances). He/she will also be liable where the harassment creates a hostile, offensive or intimidating environment in which to live or where the harassment occurs in the process of seeking or obtaining housing. Under the FEHA, there is a requirement that you file a complaint within 60 days of the offending act. Because of the FEHA's overlap with the Unruh Act which has a one year filing deadline, the DFEH will accept FEHA complaints up to one year from the date of the act complained of, but to preserve evidence and assure prompt resolution, it is best to file under the FEHA within the 60-day limit if at all possible. Unlike the employment setting, where usually only the individual discriminated against may file a complaint, in housing cases there may be multiple complainants who are denied housing (e.g. a woman who is sexually harassed, rejects the advances, and is evicted along with her roommate or family) who also are entitled to a legal remedy.

Under the FEHA, the available remedies include, but are not limited to, sale or rental of the housing accommodation discriminatorily denied, an order to the owner to cease and desist from discriminatory practices, actual (out of pocket) damages (e.g. rent differential, moving costs, increased transportation costs, costs of finding other housing), compensatory damages (e.g. compensation for emotional harm suffered), punitive damages of up to $1,000 per complainant, per violation, as well as various forms of affirmative relief (e.g. orders to advertise fairly, to distribute or post flyers explaining the public's rights and recourse under the Act, as well as orders to the respondent to assist complainants in obtaining housing) (Gov. Code, § 12987). In court actions, and at times in DFEH proceedings, complainants may also recover attorney fees. Under the Unruh Act, available remedies include actual damages, attorney fees, and general damages up to three times the amount of the actual damages, but no less than $250, for each separate violation (Civil Code Section 52).

Under federal law, Title VIII of the Fair Housing Act of 1968 (42 U.S.C. Sections 3601–3619) also prohibits sexual harassment [*Shellhammer* v. *Lewallen* (Slip opinion, July 31, 1985, No. 84-3573, 6th Cir.)] as well as discrimination in the rental or sale of housing accommodations due to race, color, religion, national origin, or sex. Complaints must be filed with the Department of Housing and Urban Development (HUD) within 180 days of the harassment incident. Complaints from areas other than San Diego, metropolitan Los Angeles, and the Bay Area will be referred to DFEH (as a deferral agency) and HUD will only process these if DFEH handling is unsatisfactory.

Available remedies through the courts include actual damages and up to $1,000 in punitive damages. HUD's only authority is for conciliation and informal mediation. If an offending party does not agree to conciliation, a complainant can elect private court action to seek money damages. HUD has no injunctive power.

Ralph Act

California has one other law, the Ralph Act (Civil Code section 51.7), which protects generally against violence or intimidation by threat of violence, both as to persons and their property, due to race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute. This law and its remedies cover virtually any situation, including employment, housing, and public accommodations in general. It is administered by the DFEH, where complaints may be filed, although filing with the DFEH is not a legal prerequisite to filing in court, the other possible route of redress. Situations in which a Ralph Act complaint would be possible and suggested in addition to other filing under other laws would include, for example, sexual harassment in which violence is implicitly or directly threatened, whether in employment or public accommodations. Available remedies include actual damages as well as $10,000 per person per violation. (Civil Code section 52). The Ralph Act requires that you file a complaint with the DFEH with-

in one year after the incident, or with the Superior Court within three years.

Torts

The remedies for sexual harassment discussed so far have been based upon statutes, or written laws passed by legislative bodies. When sexual harassment inflicts injury on the person or the reputation or feelings, it constitutes a personal tort (civil wrong). In addition to seeking remedies under the statutory schemes, a victim may seek remedies under common law tort theories.

Frequently the harassing conduct gives rise to liability for assault and battery, false imprisonment, defamation, invasion of privacy, intentional infliction of emotional distress, tortuous interference with employment contract, wrongful termination, or negligence. Tort remedies are available if the harassment occurred in the context of employment, education or any other area of your life, so long as the harasser has engaged in conduct that the law recognizes as wrongful. The names of these torts should give you some idea of the conduct to which each applies, but you should consult an attorney or sexual harassment victims' counseling service before assuming that a tort has been committed.

Each of these torts has its own set of elements that must be proven, to recover. (See Appendix for a sample complaint including many of these causes of action.) In general, a victim must prove that the harasser had a duty to her and that the duty was violated. The term "duty" is a technical term signifying a legal obligation one person has to another. This duty or legal obligation can arise from a contractual relationship or other special relationship between the "tortfeasor," or wrongdoer, and the victim.

Even if a duty exists and has been violated by the individual harasser, liability for this conduct may not extend to others, such as the employer or educational facility. Unlike statutes prohibiting harassment in education and employment, tort law does not automatically make the employer or educational institution liable for the acts of individual harassers. To seek redress successfully from the school or employer on a tort theory, there must be proof of a duty owed to the victim by the institution or employer. If the victim's school or employer committed the offensive acts in violation of this duty, liability arises. Sometimes this duty is created by the "agency" relationship between a fellow employee and the employer and the fact that the harassment was done within the scope of the fellow employee's employment. (This agency-based liability is referred to as the doctrine of *respondeat superior*.)

Recovery for tortious conduct is obtained by filing a civil complaint in an appropriate court within the applicable period of limitation. If redress is sought from a government entity, a tort claim must be filed with the appropriate government agency within one hundred days of the incident as a prerequisite to such a civil complaint. Consult with an attorney to determine the applicable periods of limitation.

Federal Courts are not usually able to hear actions based on common law tort theories and a victim may be limited to seeking redress for tortious conduct in a state court. It is not clear whether, or when, a federal court hearing a federal Title VII action will also agree to hear other causes of action arising from the same set of facts, including those premised in tort.

Successful tort plaintiffs can recover special damages, compensatory damages, and in some cases punitive damages. The recovery of such damages depends upon the type and extent of the injury suffered. (For an explanation of each of these types of damages see the remedies section.)

Judicial relief may also include injunctive relief if necessary to prevent further harm to the victim. An injunction can also be obtained against further assaults or other torts.

Contract Actions

Some contracts, especially employment contracts, may contain specific promises by one or both parties not to discriminate on the basis of sex, or not to engage in or permit sexual harassment. They may also contain specific grievance procedures for you to follow in obtaining contractual remedies for sexual harassment. Following the grievance procedure may allow you to obtain what you want quickly and easily.

If you are covered by a collective bargaining agreement between your union and your employer, your union should be able to help you present your claim against the employer and get relief. If any provision of the collective bargaining agreement has been violated by the employer, your union should insist on enforcement and remedy. If the employer has responded to your complaints of sexual harassment by disciplining a harasser who is also a union member, your union may not be as sympathetic to your claim for relief. In such cases, you should remind your union that it has a duty to represent *all* of its members fairly, and that you are harmed by sexual harassment just as much (if not more) than the harasser is by the employer's discipline. Every union that represents employees has a duty of fair representation to each of its members; and unions with more than 15 members are also subject to Title VII's requirements of non-discrimination.

Even if your contract does not contain a specific promise not to discriminate or harass, *every* contract entered into under the laws of California is interpreted as containing a covenant of good faith and fair dealing, i.e., a promise to act in good faith toward the other party. Currently there is *no clear law* on this subject, but it would appear that sexual harassment in the performance of a contract would constitute a

breach of that promise.

Contract remedies are usually limited to the financial equivalent of what was promised in the contract, unless the parties have specifically provided for other remedies. However, California courts have gradually expanded the remedies available if the contract was breached in bad faith, especially when you and your contract partner have a special (fiduciary) relationship (e.g. insurer and insured).

Criminal Law

Some forms of sexual harassment may be forbidden by the California Penal (Criminal) Code. These include rape, forced sexual activity, sexual battery, solicitation, assault and battery. You should report any such activity to a law enforcement officer. You must make a criminal complaint if you want the harasser to be prosecuted. If the harasser is found guilty of a crime, a court can impose normal criminal penalties.

Some of the crimes listed above are felonies and some are misdemeanors. A law enforcement officer can arrest a suspected harasser if the conduct amounts to a felony, even if the conduct did not take place while the officer was present. If the conduct is a misdemeanor, however, you may have to ask the officer to help you make a citizen's arrest, as the officer may not make a regular arrest for a misdemeanor unless he or she actually witnessed the conduct.

Case Law on Sexual Harassment

The following cases are presented in chronological order to show the evolution of the law in the area of sexual harassment. You should be aware that "bad" law (i.e., unfavorable to securing legal or equitable relief through the courts) still exists in some states and in some courts within the federal system. This makes it even more critical that you determine (in advance) the law in the jurisdiction that you are considering for the filing of a lawsuit.

Also note that case law is of limited value outside of the area in which the deciding court has jurisdiction. For example, cases decided by a New Hampshire court will not carry much weight in a California court (they are only secondary authority in California). On the other hand, a decision by the 9th Circuit Court of Appeal is precedential in California because California is in the 9th Circuit. A 9th Circuit decision, then, is considered primary authority for the federal law as applied in California. The reader is cautioned to seek legal counsel before assuming that cases cited in this section state the law under which the reader is protected.

1974

Monge v. *Beebe Rubber Co.*, 316 A.2d 549, 114 N.H. 130, 25 E.P.D. 643 (N.H. S.Ct. 1974)

An employer's termination at will of an employment contract which was indefinite in its term was a breach of contract when it was motivated by malice because a female employee refused the sexual advances of her foreman.

1975

Corne v. *Bausch and Lomb, Inc.*, 390 F. Supp. 161, 9 E.P.D. P10,093 (D. Ariz. 1975)

Sexual harassment by a male supervisor causing female employees to quit their jobs does *not* constitute sex discrimination under Title VII. The supervisor was satisfying a "personal urge", not the employer's policy. If the employer could be held liable for any "amorous advances" by one employee to another, then the only way it could avoid a federal lawsuit would be to have employees who were "asexual."

Albemarle Paper Co. v. *Moody*, 422 U.S. 405, 95 S Ct. 2362 (1975)

Harassment found when:

1) submission is term or condition of employment
2) submission/rejection influences employment decision affecting individual
3) "or such conduct has purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment."

1977

Alexander v. *Yale University*, 459 F. Supp. 1 (D. Conn. 1977) affirmed 631 F. 2d 178 (D.C. Cir. 1980)

Female student who allegedly received a poor grade in a course in her major field of study due to her rejection of a male professor's sexual demands was entitled to bring a private action under Title IX.

A student who was allegedly sexually harassed by a coach, but did not complain to university authorities, cannot bring an action seeking redress for sex discrimination based on the theory that general university inaction should be equated with a policy of condoning sexual harassment.

Barnes v. *Costle*, 561 F.2d 983 (D.C. Cir. 1977)

Held that if female employee's job was abolished because she refused male superior's sexual advances, the superior's conduct violated the Equal Employment Opportunity Act of 1972, which amended Title VII. Sexual harassment is actionable under Title VII as sex-based discrimination. Furthermore, an employer is vicariously liable for acts of its supervisory personnel. However, if a supervisor contravenes the employer's policy without the employer's knowledge and the consequences are rectified when discovered, the employer may be relieved from responsibility

under Title VII.

Munford v. *James T. Barnes & Co.*, 441 F.Supp. 459 (E.D. Mich. 1977)

An employee alleged she was discharged for refusing the sexual advances of her supervisor. The court stated the employer could be held liable because of its "ratification" of the supervisor's acts of discrimination by supporting the employee's dismissal without investigating the complaint. But the court declined to follow the *Barnes* v. *Costle* ruling that the employer was automatically vicariously liable for all discriminatory acts of its agents.

Tomkins v. *Public Service Electric and Gas Co.*, 568 F.2d 1044 (3rd Cir. 1977)

In this case alleging sexual harassment, the court devised a two-part test to establish a claim of sexual harassment under Title VII:

i. the acts complained of must constitute a condition of employment;
ii. the condition of employment was imposed by the employer on the basis of the employee's sex.

1978

Heeland v. *Johns-Manville Corp.*, 451 F.Supp. 1382, 20 FEP Cases 251 (D.Colo. 1978)

To present a prima facie case of sex discrimination violative of Title VII, the plaintiff must prove that submission to sexual advances of a supervisor was a term or condition of employment, that this fact substantially affected plaintiff's employment, and that employees of the opposite sex were not affected in the same way by these actions. An employer is responsible for the discriminatory acts of its agents, even if it does not have a practice of condoning sexual harassment.

Neeley v. *American Fidelity Insurance Co.*, 17 E.P.D. ¶8395 (W.D. Okla. 1978)

The sexual advances by a supervisor did not amount to an unlawful employment practice where the supervisor's actions were personal acts without the employer's knowledge or sanction, and the woman worker was not required to endure the harassment in order to maintain her job.

Price v. *Lawhon Furniture Co.*, 16 E.P.D. ¶8342 (D.Ala. 1978)

Plaintiff who alleged religious discrimination in her EEOC charge could not bring a court action alleging that she was fired because she refused the sexual advances of her supervisor, since the charge of sex bias is not related to a charge of religious bias.

Rinkel v. *Associated Pipeline Contractors*, 16 E.P.D. ¶8331, 17 FEP Cases 224, (D. Alaska 1978)

A woman who alleges that an employer refused to hire her because she would not acquiesce in the sexual advances of a management official has stated a claim for relief under Title VII.

Smith v. *Rust Engineering Co.*, 18 E.P.D. ¶8698 (N.D.Ala. 1978)

No claim of relief under Title VII was stated where the plaintiff's allegations of sexual advances were not accompanied by an alleged tie with a term or condition of employment.

Williams v. *Bell*, 587 F.2d 1240 (D.C. Cir. 1978)

The burden of proof is on the employer to establish an allegedly legitimate nondiscriminatory reason for the employee's discharge.

1979

Dacus v. *Southern College of Optometry*, 476 F.Supp. 639, 22 FEP Cases 963 (D.Tenn. 1979); affirmed 657 F. 2d 81 (6th Cir. 1981)

Sexual advances of optometry college's male administrators to female employees who resisted them, while not shown to have caused their demotion, termination, or receipt of lower salary, are evidence of intent and willingness of college's male hierarchy to discriminate against female employees in violation of Title VII.

Fisher v. *Flynn*, 598 F.2d 663, 19 E.P.D. ¶9204 (1st Cir. 1979)

A complaint by a college teacher alleging her employment was terminated because she refused the "romantic advances" of the department chair was an insufficient claim without an allegation that the chair had some input in the termination decision or that the employer knew of, or should have known of, the chair's alleged advances.

Ludington v. *Sambo's Restaurants, Inc.*, 474 F.Supp. 480, 21 E.P.D. ¶30,367 (E.D. Wisc. 1979)

Allegations of individual acts of sexual harassment by supervisory personnel are not actionable unless acts were sanctioned in some way by the employer.

Miller v. *Bank of America*, 600 F.2d 211 (9th Cir. 1979)

A corporation or employer is liable under Title VII for harassment by a supervisor even though the supervisor's actions violated company policy. (*respondeat superior*).

Smith v. *Amoco Chemicals Corp.*, 20 E.P.D. ¶30,166 (S.D.Tex. 1979)

Verbal passes did not rise to the level of constituting a Title VII violation.

1980

Brown v. *City of Guthrie*, 30 E.P.D. ¶33,031, 22 FEP Cases 1627 (W.D. Okla. 1980)

If an employer makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation, then the employer is liable for the consequences of a constructive discharge.

Plaintiff carries the burden of proving that the harassment complained of creates a sex discriminato-

ry "condition of employment" within Title VII and is not an "isolated incident or a mere flirtation."

Clark v. *World Airways, Inc.*, 24 E.P.D. ¶31,385, 24 FEP 305 (D.D.C. 1980)

Plaintiff lost her Title VII claim because she could not prove that the sexual harassment by her supervisor was a term or condition of employment. However, a $52,000 punitive damage award was upheld for a claim of sexual assault.

EEOC v. *Olin Corp.*, 26 E.P.D. ¶32,104 (W.D.N.C. 1980)

An employer could not be held accountable for discrimination on the basis of an individual's allegations that she had been sexually harassed by a supervisor where the incident was subject to a more harmless interpretation, no report was made to company officials, and the incident was not reported to the EEOC.

EEOC v. *Sage Realty Corp.*, 22 FEP Cases 15660, 507 F.Supp. 599 (S.D.N.Y. 1980)

An employer does not have the unfettered discretion under Title VII to require employees to wear *any* type of uniform the employer chooses, including uniforms which may be characterized as revealing and sexually provocative and which may subject the employee to harassment by non-employees.

Minnesota v. *Continental Can Co., Inc.*, 23 E.P.D. ¶30,997 (Minn. S.Ct. 1980)

Employer's failure to take prompt and appropriate action to curtail verbal and physical sexual harassment of female employee by her co-employees constitutes sex discrimination that violates the Minnesota Human Rights Act.

Montano v. *Amstar Corp.*, 502 F.Supp. 295, 25 E.P.D. ¶31,674 (E.D.Pa. 1980)

Sexual harassment is not a cognizable claim under the Civil Rights Act of 1866.

Marentette v. *Michigan Host, Inc.*, 506 F.Supp. 909, 24 FEP Cases 1665 (E.D. Mich. 1980)

Sexually provocative dress code imposed as a condition of employment that subjects persons to sexual harassment may violate Title VII.

Seritis v. *Lane*, 22 E.P.D. ¶30,747 (Cal. S. Ct. 1980)

Plaintiffs were sexually harassed by their union representative, who "solicited them to engage in sexual acts with him . . . offered them employment as prostitutes and pornography entertainers and boasted that his position with the union and underworld contacts made it prudent to comply with his request." The court found *no* violation of the state constitutional right to employment without sex discrimination.

However, plaintiffs each received $25,000 because the union failed in its duty of fair representation, and $25,000 for infliction of emotional distress. Each plaintiff was also awarded $50,000 in punitive damages.

Williams v. *Civiletti*, 487 F. Supp. 137–138, 25 E.P.D. ¶31,530 (D.D.C. 1980)

Decision on remand included an incentive award (in addition to fees and costs) for attorneys where the claimant aided in establishing a novel theory of recovery (for sexual harassment).

1981

Bundy v. *Jackson*, 641 F.2d 934 (D.C. Cir. 1981)

Sexual harassment consisting of sexually stereotyped insults and demeaning propositions constituted sex discrimination, regardless of whether the plaintiff lost any tangible job benefits as a result.

Plaintiff must make a prima facie case of sex discrimination, but then the employer must articulate a legitimate non-discriminatory reason for his/her action (burden of going forward shifts to employer). Once the employer submits the evidence, the burden of going forward shifts back to the plaintiff. The ultimate burden of persuasion always remains with the plaintiff.

Caldwell v. *Hodgeman*, 26 E.P.D. ¶31,932 (Mass.-Dist.Ct. 1981)

Employer was accused of sticking his hands down the pants of the plaintiff in front of two other male employees. Although the court could not review the factual findings of the administrative examiner, it held that the examiner's decision that there was no sexual harassment was arbitrary and capricious.

Guyette v. *Stauffer Chemical Co.*, 518 F.Supp. 521, 27 E.P.D. ¶32,[illegible]39 (1981)

A non-supervisory employee is not an "agent" of an employer and thus is not liable under Title VII in a sexual harassment suit.

Meyers v. *I.T.T. Diversified Credit Corp.*, F.Supp. 1064 (E.D.Mo. 1981)

Sexual harassment victim received $3000 beyond back pay, for interest and other lost benefits, in order to make her "whole." However, the plaintiff was not reinstated, as requested, in light of the likelihood that hostility that might ensue.

Morgan v. *Hertz Corp.*, 27 FEP Cases 990, 542 F. Supp. 123 (W.D. Tenn. 1981), affirmed 725 F. 2d 1070 (6th Cir. 1984)

Addressing sexually indecent comments to female employees is a form of sexual harassment and discrimination prohibited by Title VII. Injunction was issued to prevent further comments in the future.

Female rental car representatives who were unlawfully denied promotion to the position of station manager and, consequently, denied free use of an automobile, are entitled to recover all costs involved in operating and maintaining an automobile.

Rogers v. *Loews L'Enfant Plaza Hotel*, 526 F.Supp.

523, 28 E.P.D. ¶32,553 (D.D.C. 1981)

Plaintiff, who was sexually harassed by her immediate supervisor while working at a hotel-restaurant, was entitled to general and punitive damages under state tort law theories of intrusion, assault and battery, and intentional infliction of emotional distress.

There is no cause of action under Section 1983 of the Civil Rights Act of 1871 where there are no allegations that the offending conduct was carried on under color of state or local law.

State University of New York at Albany v. *New York Human Rights Appeal Board,* 26 E.P.D. ¶32,[illegible] (N.Y.S.Ct., App. Div. 1981)

Compensatory damage award was reversed where there was no evidence that the university condoned or acquiesced in the sexual harassment of its employee. Evidence indicated that once the university became aware of the alleged sexual harassment, it took positive action to investigate and correct the situation.

Respondeat superior does not apply in sex discrimination cases.

Walter v. *KFGO Radio,* 518 F.Supp. 1309, 28 E.P.D. ¶32,497 (D.N.D. 1981)

The court held that there was no sex discrimination based on a claim of sexual harassment, even if the employee was correct that her supervisor patted her on the bottom, touched her in the breast area, and made an inebriated attempt to have an affair with her during a convention, because there was no proof that acquiescence was a term or condition of employment. There was also no proof that the supervisor's conduct substantially interfered with the plantiff's work performance or that it created an intimidating, hostile, or offensive working environment.

Woerner v. *Brzeczek,* 519 F.Supp. 517, 28 E.P.D. ¶32,505 (N.D.Ill. 1981)

Plaintiff stated a cause of action under 42 U.S.C. 1983 alleging a violation of the Equal Protection Clause because she was harassed by a police officer based on her sex. Individual supervisors and fellow officers were subject to liability for their individual participation in the harassment or for failure to restrain subordinates, while the employing city was implicated by allegations that the harassment was carried on pursuant to the city's custom and usage.

Wright v. *Methodist Youth Services,* 511 F.Supp. 307 (N.D.Ill. 1981)

Termination of a man's employment because he rejected homosexual advances made by his male supervisor was a violation of Title VII. The theory was that a similarly situated woman would not have had sexual demands made of her.

Hill v. *BASF Wyandotte Corp.,* 21 FEP Cases 66 (E.D. Mich. 1981)

To prove a *prima facie* case of sexual harassment—plaintiff must show that:

1) superior made sexual advances;
2) submission to superior was a term or condition of employment;
3) her refusal to submit was a motivating factor in terminating her employment;
4) male employees were not affected in the same way.

1982

Anaconda Copper Co., 82-1 ARB ¶8278 (No. 81K/22511, February 4, 1982)

An arbitrator determined that the termination of a male mill worker without progressive discipline was reasonable after he was warned several times to stop harassing a female coworker.

Barnes v. *Oody,* 29 E.P.D. ¶32,776 (E.D.Tenn. 1982)

Federal employees charged with sexual harassment could not sue for defamation since the truth of the charges had already been established in arbitration and in the findings of an administrative agency.

EEOC and Barbara Champion v. *Domino's Pizza,* Civ.Act.No. 80-74381 (E.D.Mich. 1982)

Plaintiff was victim of physical and verbal sexual harassment by her supervisor. The court granted injunctive relief in the form of reinstatement at a comparable level of employment and removal from plaintiff's personnel file of references to her termination. Plaintiff is "presumptively entitled to back pay," but it was not granted because she had found other employment shortly after her termination. Costs and attorney fees were awarded, but not punitive damages.

Gan v. *Kepro Circuit Systems,* 27 E.P.D. ¶32,379, 28 FEP Cases 639 (E.D.Mo. 1982)

A female employee's allegations that the sexually offensive atmosphere at her place of work was so intolerable as to make her resignation amount to constructive discharge were rejected where claimant's "sexually aggressive" conduct and sexually explicit conversation contributed in large part to the otherwise objectionable work environment.

Hart v. *Sullivan,* 55 N.Y. 2d. 1011 (N.Y. 1982)

Sexual harassment by co-workers cannot be attributed to an employer where there is no allegation that the employer had knowledge of or acquiesced in the conduct. The usual rule of *respondeat superior* is not applicable in sex discrimination cases under § 296 of the Executive Law (a state anti-employment discrimination statute).

Hayden v. *Atlanta Newspapers,* 534 F.Supp. 1166 (N.D. Ga. 1982)

Sexual harassment violates Title VII when an

employer creates or condones a substantially discriminatory work environment regardless of whether the complaining employee loses any tangible job benefits as a result of discrimination.

Henson v. *City of Dundee*, 682 F. 2d. 897, 29 FEP Cases 787; 29 E.P.D. ¶32,993 (11th Cir. 1982)

A hostile or offensive working environment created by sexual harassment constitutes a violation of Title VII because the psychological well-being of an employee amounts to a term, condition, or privilege of employment; this is true irrespective of whether the complainant suffers a tangible job detriment. However, since the plaintiff does not seek reinstatement to her position in the city police department, she will probably not be able to obtain an injunction to restrain other sexual harassment at the department.

Koster v. *Chase Manhattan Bank*, 93 F.R.D. 471, 28 E.P.D. ¶32,557 (S.D.N.Y. 1982)

The court refused to grant a broad protective order under Fed. R. Civ. Pro. section 26(c) prohibiting dissemination of all information obtained during discovery when the bank claimed that its reputation was injured by widespread sensationalized media coverage of a sexual harassment suit.

Martin v. *Norbar*, 537 F.Supp. 1260, 31 E.P.D. ¶33,444 (S.D. Ohio 1982)

Summary judgment was denied in a sexual harassment suit where there existed disputed issues of fact concerning the appropriateness of the employer's response to a female truck driver's complaint that she was harassed by her assigned driving partner. The employer, after inquiries, chose not to reassign the claimant, and she resigned. One question remaining to be resolved was whether the employer knew or should have known of the alleged harassment.

NLRB v. *Downslope Industries, Inc.* 676 F.2d 1114 (6th Cir. 1982)

Freedom from sexual harassment is a "working condition" from which employees may organize to protect themselves under the National Labor Relations Act. Supervisor (although usually not protected by the NLRA) was entitled to a reinstatement after being discharged for supporting employees who were protesting sexual harassment by the plant manager.

Snipes v. *U.S. Postal Service*, 677 F.2d 375, 28 E.P.D. ¶32,684 (4th Cir. 1982)

In a per curiam opinion, the court affirmed the discharge of a postal supervisor for abusing his authority by sexually harassing subordinate employees.

Coley v. *Consolidated Rail Corp.*, 561 F Supp, 645 (ED Mich 1982)

Action was brought under Title VII and Michigan's Elliott-Lansen Civil Rights Act alleging quid pro quo sexual harassment and discrimination in employment based on national origin. The court found that the nexus between sexual harassment and employment was established; employment is affected by a superior condoning actions which result in a hostile, intimidating, and offensive work environment.

1983

Huebschen v. *Department of Health and Social Services*, 716 F. 2d 1167, 32 E.P.D. ¶33, 812, 32 FEP Cases 1582 (7th Cir. 1983)

Plaintiff cannot bring an action under Section 1983 of the Civil Rights Act based upon a Title VII claim against a person who could not be sued directly under Title VII. Plaintiff did not state a cause of action for violation of his equal protection rights by alleging that defendant recommended his termination because of his failure to have sex with her.

Phillips v. *Smalley Maintenance Services, Inc.*, 711 F. 2d 1524, 32 FEP Cases 975, 32 E.P.D. ¶33,802 (11th Cir. 1983)

In an August 15, 1983, decision, the U.S. Court of Appeals for the 11th Circuit upheld a District Court decision in which a female plaintiff was awarded damages of $25,000 in an Alabama state law "invasion of privacy" claim.

Pursuant to an advisory jury verdict, the U.S. District Court for the Northern District of Alabama found Smalley Maintenance Services, Inc., and its president and principal owner, Ray Smalley, to have wrongfully discharged Brenda Phillips for refusing to engage in sexual activities with Smalley. The jury found that "Smalley had wrongfully intruded into Phillips' private activities so as to cause outrage or mental suffering, shame or humiliation to a person of ordinary sensibilities." The jury cited Smalley for violating Title VII of the Civil Rights Act of 1964.

Priest v. *Rotary*, 98 F.R.D. 755, 32 E.P.D. ¶33,864, 32 FEP Cases 1064 (N.D.Cal. 1983)

The U.S. District Court denied the motion of a man sued for sexual harassment to compel the woman who sued him to provide detailed information about her sexual history.

The court followed the general rule for civil cases in federal courts that evidence of an individual's prior acts is not admissible to prove that one engaged in similar acts. The court also was concerned that discovery of intimate aspects of the lives of persons who file suit has the clear potential to discourage victims of sexual harassment from prosecuting lawsuits such as the one in question. This limitation recently has been codified in California law by SB 1057 (Chapter 1328, Statutes of 1985).

Toscano v. *Nimmo*, 570 F.Supp. 1197, 32 E.P.D. ¶33,848, 32 FEP Cases 1401 (D. Del. 1983)

The U.S. District Court for the District of Delaware ruled that a female employee of the Veterans Administration (VA) Hospital in Elsmere, Del., was

discriminated against when a position she applied for was given to another female VA employee who had an affair with the selecting official. The plaintiff sued the administrator of the hospital, alleging violations of Title VII of the Civil Rights Act of 1964, as amended, and the denial of due process of law in violation of the Fifth Amendment of the U.S. Constitution.

The court held the Veteran's Administration responsible for the unlawful conduct of the supervisor, in view of the fact that the hospital administration failed to take prompt remedial action when advised of the supervisor's actions.

Katz v. *Dole*, 709 F. 2d 251, 32 E.P.D. ¶33,639, 31 FEP Cases 1521 (4th Cir. 1983).

A federal employee was entitled to prevail on claims of sexual harassment when she showed that she was subjected to sustained non-trivial harassment, and that the employer was aware of the problem because of her specific complaints but failed to remedy the situation. The employer had a policy against sexual harassment, but it was ineffective and was known to be so by supervisory personnel. Other sex discrimination claims were properly dismissed after the employer justified instances of disparate treatment. Erroneous dismissal of the harassment claims did not automatically require reinstatement of the separate disparate treatment claims.

Lamb v. *Smith International, Drilco Div.*, 32 E.P.D. ¶33,772 (D.C. Tex 1983)

When less than satisfactory work performance can be directly traced to earlier sexual harassment and when that harassment has been the subject of employee complaints which have been for the most part ignored, a resultant discharge is discriminatory, rendering the employer liable for a resultant loss of income.

Craig v. *Y & Y Snacks, Inc.*, 721 F.2d 77, 32 E.P.D. ¶33,922, 33 FEP Cases 187, (3rd Cir. 1983)

An employer was liable for the sexually harassing conduct of a supervisor even if it was unclear that the employer had knowledge of the acts. A female employee was propositioned by the supervisor, and when his advances were rejected, he threatened to "get even" with her. Ten days later she was summarily dismissed by him when she missed a day's work due to illness. Her employer's liability for the personal conduct of the supervisor was upheld because the supervisor had broad authority to hire, discipline, and dismiss employees.

Shellhammer v. *Lewallen*, Slip Opinion, July 31, 1985, No. 84-3573, 6th Cir. (W.D. Ohio 1983)

Upheld a federal magistrate's decision that sexual harassment of tenants or propsective tenants is actionable under Title VIII of the Fair Housing Act. A Toledo, Ohio landlord was found liable under the Act for evicting female tenants who refused to perform sexual acts with him. His wife was found vicariously liable because she was aware of her husband's practices, and as apartment building manager, could have prevented or stopped both the harassment and the evictions, but failed to do so.

1984

Jennings v. *DHL Airlines*, No. 83 C-5789, U.S.D.C. N. Ill., (May 21, 1984)

Psychological records of an employee are priviledged and an airline may not subpoena them to prove that the employee's complaints of sexual harassment were caused by her emotional problems and not actual sexual harassment.

Barrett v. *Omaha National Bank*, CAB, No. 83-1990, February 3, 1984

Title VII of 1964 Civil Rights Act does not require an employer to fire employees accused of sexually harassing other employees, it merely requires employers to take "prompt remedial action" to end the harassment.

Easter v. *Jeep Corp.* 730 F.2d 520 (6th Cir. 1984)

Female supervisor informed by other employees that they would not submit to her authority because she was a woman, that women could not tell men what to do, that women are only useful as sex objects, and that she should be humble. Threats were made against her family should she continue working at Jeep Corp. This constitutes sex discrimination and her resignation was a constructive discharge.

Stubbs v. *United States* 744 F.2d 58 (8th Cir. 1984), *cert. denied* 105 S.Ct. 2113 (1985)

Tort case alleging wrongful death by sexual harassment and emotional distress. Female private in U.S. Army was harassed, told by her sergeant that if she had sex with him her job would be easier on her; if not, it would become rougher. She was touched against her will. She had been raped three years earlier, and the emotional stress caused by the new incident resulted in her suicide. The action was dismissed against the United States because it would "go to the heart of military decision-making and discipline."

Lucas v. *Brown & Root, Inc.* 736 F.2d 1202 (8th Cir. 1984)

Although most employment may be terminated at the will of either party, an exception is when the discharge is "against public policy." "A woman invited to trade herself for a job is in effect being asked to become a prostitute . . . Plaintiff should not be penalized for refusing to do what the law forbids." Title VII does not pre-empt this state-law contract claim. She may also try to recover under tort law for intentional infliction of emotional distress.

Barrett v. *Omaha Nat. Bank* 726 F.2d 424 (8th Cir. 1984)

Sexual harassment by a co-employee is not a violation of Title VII unless the employer knew or should have known of the harassment and failed to take immediate and appropriate corrective action. Employee has right to complain of harassment by co-employee without fear of retaliation. (In this case, however, no retaliation was found).

Wolk v. *Saks Fifth Ave. Inc.* 728 F.2d 221 (3rd Cir. 1984)

Court denies cause of action based on sexual harassment by supervisor under either tort or contract theories. Does not address merits of the claim.

Simmons v. *Lyons* 746 F.2d 265 (5th Cir. 1984)

Sexual harassment constitutes employment discrimination under Title VII.

Ramsay v. *Olin Corp.* (D.C. N.Y. 1984) 35 EPD ¶34,710

Summary judgment may be granted in a Title VII action alleging sexual harassment and unlawful discharge where a plaintiff fails to show any causal connection between her firing and the alleged harassment. Where evidence supports the employer's stated reasons for firing and the claimant fails to show that the stated reasons are pretextual, it is proper to grant a motion for summary judgment.

King . *Palmer* (D.C. D. of C. 1984) 35 E.P.D. ¶34,735

A claimant, alleging she was denied a promotion which went to a less qualified person because the latter had a sexual relationship with the supervisor who was responsible for the promotion, is entitled to make out a *prima facie* case of sex discrimination under Title VII. The claimant must show: that some kind of sexual relationship between the supervisor and the less qualified applicant was a substantial factor in the promotion of the less qualified person; that plaintiff was a member of a protected class; that claimant applied and was qualified for a job for which the employer was seeking applicants; and, that claimant was rejected. To rebut the *prima facie* case "the employer need only produce admissible evidence which would allow the trier of fact rationally to conclude that the employment decision had not been motivated by discriminatory animus" (*Texas Department of Community Affairs* v. *Burdine* (450 U.S. 248, 257, 1981)). The plaintiff, then, retains the burden of persuading the court "either directly, that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's explanation is unworthy of credence." *Id.* at 256.

Sensibello v. *Globe Security Systems Company* (D.C. Pa. 1984) 35 EDP ¶34,784

Where a discharged employee provides evidence to prove that sexual harassment, including physical assaults, subjection to public ridicule, and offers of promotions in exchange for sexual favors occurred and led to her discharge, the employer need credibly show a reasonable basis for belief that plaintiff engaged in improprieties or that defendant formed a legitimate business judgment that employee should be terminated, which reasons are not merely pretextual.

1985

Vinson v. *Taylor* 760 F.2d 1330 (D.C. Cir. 1985)

—rehearing *en banc* denied—

Vinson v. *Taylor* 753 F.2d 141 (D.C. Cir. 1985)

An infringement of Title VII is not necessarily dependent upon the victim's loss of employment or promotion. A victim's "voluntary" submission to the sexual demands can have no bearing on whether or not she was subjected to sexual harassment as a condition of employment. Plaintiff should be able to submit evidence of other women in office who were harassed. "Even a woman who was never herself the object of harassment might have a Title VII claim if she were forced to work in an atmosphere in which such harassment was pervasive." Employer need not have had specific notice of harassment to be held liable for sexual harassment by a supervisor.

Davis v. *United States Steel Corp.* 779 F.2d 209 (4th Cir. 1985)

The observation and inaction of a supervisor of an employee engaging in sexual harassment is sufficient to make company liable under the doctrine of *respondeat superior.* Supervisor has responsibility to take necessary corrective action.

McKinney v. *Dole* 765 F.2d 1129 (D.C. Cir. 1985)

"We have never held that sexual harassment or other unequal treatment of an employee or group of employees that occurs because of the sex of the employee must, to be illegal under Title VII, take the form of sexual advances or of the incidents with clearly sexual overtones. We decline to do so now. Rather, we hold that any harassment or other unequal treatment of an employee or group of employees that would not occur but for the sex of the employee or employees may, if sufficiently patterned or pervasive, constitute an illegal condition of employment under Title VII. . . . In fact, any disparate treatment, even if not facially objectionable, may violate Title VII." An action need not be overtly/explicitly sexual to constitute sexual harassment. (p. 1138)

Horn v. *Duke Homes, Div. of Windsor Mobile Homes.* 755 F.2d 599 (7th Cir. 1985)

"But for Horn's womanhood, Haas would not have demanded sex as a condition of employment. . . . Because of her sex, therefore, Horn was disadvantaged by pressure to submit to an additional, humiliating condition of employment that served no

legitimate purpose of the employer. Her right to refuse this condition was protected by Title VII." Employer need not have actual or constructive knowledge of supervisor's conduct to be held liable (strict liability). Court must award back pay unless "special factors" present. To compute back pay subtract what plaintiff ended up earning from what she would have earned.

1986

Otto v. *Heckler*, Slip opinion, Jan. 28, 1986, No. 84-6563, (9th Cir.)

Title VII does not preclude other claims for relief (e.g. constitutional, tortious). Title VII covers job-related harm, but one can recover under other theories for non-job-related harm, if the injuries are actually separate. Plaintiff in this case makes out a valid tort claim because her supervisor followed her, defamed her, and harassed her with telephone calls, thus using "means beyond the outer perimeter of his authority."

Monge v. *Superior Court* (1986) 176 Cal. App.3d 503

The Court of Appeal granted the petition for writ of mandate to overturn an order to strike holding that a cause of action for sexual (harassment) employment discrimination under California Government Code Section 12900 *et seq.* may sustain recovery of punitive damages, and that the allegations in plaintiff's complaint that a lewd question had appeared on the computer terminal of one plaintiff, that plaintiff had complained to the other plaintiff, her supervisor, that plaintiff supervisor had transmitted the complaint to defendant company officers, and that defendants refused to investigate or correct the complaint and engaged upon a systematic course of retaliation were sufficient to plead facts that could establish the elements of oppression or malice within the meaning of California Civil Code section 3294 (allowing recovery of punitive damages where defendant has been guilty of oppression, fraud, or malice).

Meritor Savings Bank v. *Vinson* (1986) ___ U.S. ___

Reversed D.C. Circuit and held that employer is not strictly liable for sexual harassment perpetrated by its supervisory personnel. Liability depends on circumstances; evidence of victim's sexual conduct with others than harasser may be, and is here, relevant and admissible.

Affirmed D.C. Circuit's holding that work environment sexual harassment constitutes sex discrimination and is a violation of Title VII.

Chapter V

USING THE ADMINISTRATIVE/LEGAL SYSTEM SEXUAL HARASSMENT IN EMPLOYMENT

Before Filing a Complaint

Sexual harassment cases can be difficult to prove and a properly conducted investigation may take some time. The success of your complaint can depend on the strength of your documentation. Your chances of success may be greater if you can show that you did complain and the company either did not bother to investigate the situation properly or failed to correct it.

However, even if your documentation is not complete or as strong as you would like, it may be worthwhile going outside the company with your complaint if you are not satisfied with your company's treatment of your sexual harassment allegations. Sometimes, merely the possibility of an outside investigation encourages an employer to clear up the problem. If you are a union member, first follow grievance procedures outlined by your contract. If your work situation has become intolerable and you feel it is not likely to improve, you may have nothing to lose and possibly something to gain by taking your complaint outside the company.

If you have already lost your job because of sexual harassment, you may still want to file a complaint. Although this may not provide an immediate remedy, you may eventually be awarded the following: reinstatement; money damages such as back pay (the amount of wages owed to you for the period you were out of work because of discrimination); front pay (an amount of money, equal to your wages for a certain period of time determined to be a reasonable amount of time to find a new job); compensation for expenditures made by you to find a new job or to seek treatment for health problems arising from the sexual harassment; and positive work references. (See remedies section).

It is important to remember that seeking redress through an outside agency does not mean you will get immediate action. Most of the federal and state regulatory offices are understaffed and have considerable backlogs, and will, therefore, not investigate your complaint immediately. The waiting time for complaint resolution at most agencies is anywhere from a few months to several years.

If you are still on the job, your employer may not respond favorably when you actually file a complaint or when the employer is notified by an investigator that you have filed a formal employment discrimination complaint (as required by law). However, it is illegal for the company to retaliate against you for this. If the company retaliates in any way, whether by firing you or by negatively altering your work situation, report this to the investigating agency immediately. Often the agency will act more quickly on this kind of complaint than on your original one.

The following sections present more detailed information on the various federal, state and local laws and agencies which process sexual harassment complaints of employees.

Office of Federal Contract Compliance Program

(class action complaints only)

Overview

The United States Department of Labor's Office of Federal Contract Compliance Program (OFCCP) is responsible for enforcing Executive Order 11246, as amended, which forbids discrimination in employment by federal contractors and requires them to take affirmative action in hiring, promotion, pay and training for women and minorities. All federal contractors and subcontractors employing 50 or more persons with $50,000 or more in contractual obligations must develop an Affirmative Action Plan. The plan must establish goals and timetables to correct deficiencies in the employment of women and minority groups. This law, however, does not provide a means for individual complainants to resolve their specific discriminatory situations.

Each year the OFCCP conducts reviews of selected federal contractors to evaluate their employment policies and practices and to determine if patterns of discrimination exist. This compliance review process is the agency's basic investigative function.

The OFCCP does not have sufficient staff to monitor the programs of all government contractors. Instead, thirteen governmental agencies (Defense, Agriculture, etc.) are assigned a group of industries for which they are responsible. These agencies are called compliance agencies. Each compliance agency has a staff of "compliance officers" whose sole job is to examine these affirmative action programs, and do yearly "compliance reviews."

If problems are uncovered in the compliance review, the OFCCP initiates conciliation discussions and makes recommendations for resolving discriminatory salary, hiring, promotion and training policies. Acceptance of such recommendations is voluntary. If conciliation efforts fail, the OFCCP may invoke sanctions such as cancellation or suspension of contracts and ultimately debarment from holding further federal contracts.

Process

In addition to the compliance reviews, any person who feels that a company's Affirmative Action Plan is inadequate or is not being adhered to can file a complaint with the OFCCP. (Complaints of individual cases of discrimination are not accepted and are referred by OFCCP to the EEOC.) Complaints should be filed no later than 180 days after the most recent act of discrimination. A complaint form can be requested from the United States Department of Labor Office of Federal Contract Compliance in your area. The complaint may also be in a letter form, stating the contractor's name and address, your own name and address, and a description of the discriminatory acts. (See Appendix for a sample OFCCP complaint.)

An investigator will examine the company records pertinent to the complaint, interview you and other employees, and then provide a summary of the findings. Upon finding grounds for the complaint, the investigator will attempt informal resolution. The problem is usually solved within 60 days. If the company refuses to correct the discriminatory practices, the OFCCP and the compliance agency will hold a hearing and review the findings. This may take from one to five years. The results of this hearing are final and are not subject to appeal.

Relief

The OFCCP, upon finding a discriminatory policy or practice in a company, may cancel, terminate or suspend any contract with the company or may cause a contractor to be debarred from further contracts.

It is important to remember, however, that *individual* complaints of discrimination are not handled by OFCCP. Therefore, you cannot go to OFCCP to get back pay, reinstatement, or other remedies normally available in discrimination complaint resolution.

Equal Employment Opportunity Commission

Overview

The Equal Employment Opportunity Commission (EEOC) is the federal agency responsible for enforcing Title VII of the 1964 Civil Rights Act, as amended (42 U.S.C. section 2000(e), *et seq.*), which outlaws discrimination in employment on the basis of sex, race, age, religion and national origin. The EEOC was among the first to recognize that sexual harassment is a form of sex discrimination in employment. The EEOC acknowledges that a finding of sexual harassment does not depend on the existence of any one set of facts. Sexual harassment can occur in a wide variety of circumstances and can encompass many variables. Although the most widely recognized fact pattern is that in which a male supervisor sexually harasses a female employee, this form of harassment is not the only one recognized by the EEOC. The EEOC's view of sexual harassment is that a man as well as a woman may be the victim of sexual harassment, and a woman as well as a man may be the harasser; the harasser does not have to be the victim's supervisor; and the victim does not have to be of the opposite sex of the harasser.

If you experience sexual harassment on the job, you may file a charge of employment discrimination with the EEOC office nearest you. (See Appendix for a list of EEOC office locations.) Title VII requires that you file with the EEOC within 180 days of the last act of discrimination or retaliation for filing a complaint. EEOC jurisdiction extends to all employers with 15 or more employees. If you work in a company with fewer than 15 employees, you must file with your state or local agency (Department of Fair Employment and Housing (DFEH) in California).

Process

You may file your charge with the EEOC either by mail or in person. During your initial contact with the EEOC you will be interviewed about your allegations, counseled as to your rights during the EEOC process and what to expect from the process, and you may possibly be referred to another agency if the EEOC cannot handle the complaint. (See Appendix for a sample EEOC complaint.)

After the charge has been filed, your employer will be notified, usually within 10 days, that you have filed a charge of discrimination. Any retaliation the employer may take against you is illegal and should be reported to the EEOC. The employer will be called to a fact-finding conference, at which time both you and your employer will present evidence face to face. Witnesses will be allowed if they have actual knowledge of the incident(s). The information obtained at this conference will be used to help reach a settlement satisfactory to both you and your employer.

While most EEOC charges are resolved through the fact-finding conference, some cases require additional investigation. In such cases if continued investigation shows there is reasonable cause to believe that discrimination occurred, the EEOC legal unit will review the case and decide either to go to court on your behalf (i.e., prosecute the case) or to issue you a "right to sue" letter. The letter informs you of your right to hire private counsel and go to court with an employment discrimination cause of action. If you choose private court action, you must file within 90 days of receipt of the letter. You are required to be represented by a lawyer.

The EEOC reviews charges of sexual harassment on a case-by-case basis, recognizing that actions that constitute sexual harassment in one factual context may not in another.

If the EEOC investigation does not find a violation of the law, you still have the right to file a private civil suit alleging employment discrimination.

Most EEOC offices have a considerable backlog of pending cases. You may have to wait from several months to several years to have your complaint resolved. Do not be discouraged. If you file a complaint, see it through to resolution.

Relief

Before attending the fact-finding conference, think about what you would accept as a settlement, since the complaint may be resolved at this point. Figure out the extent of your financial loss resulting from the sexual harassment, such as:

- — lost wages
- — money spent looking for a new job;
- — lost benefits;
- — sick leave usage;
- — time and money spent in counseling or medical treatment;
- — a dollar figure to cover your pain and physical or emotional suffering.

The EEOC will try to put you back where you would have been had you not suffered discrimination. This is called "making you whole." In other words, the agency is concerned with determining if a wrong has been committed, and if so, correcting it. The EEOC is not concerned with punishing the harasser in any way, such as making him pay punitive damages. Instead, the EEOC encourages women to ask that companies establish policies and procedures for prevention of sexual harassment and for the resolution of future sexual harassment complaints (affirmative relief). Your relief request might include distribution of written information, meetings to talk about the issue, training for all levels of employees on the issue, and company grievance procedures describing how you may proceed if you feel you are being sexually harassed. You may also request that all negative statements be removed from your work record, that no negative references be given about you, and that you be reinstated in your job or be assigned to another supervisor.

Additional Considerations For The Federal Employee

Most federal employees are protected against sexual harassment by the provisions of Title VII, set forth above. The laws regarding burdens of proof, evidence of discrimination, remedies and procedures discussed above are generally applicable to federal employees and applicants However, if you are a federal employee wishing to pursue a claim of sexual harassment against your employer you must be aware of and meet procedural requirements not required of a private employee. If you fail to meet these additional requirements you may lose your right to sue.

Initially, you must exhaust internal complaint procedures before filing a claim with the EEOC or instituting a court action. You begin this internal process by notifying your department or agency Equal Employment Opportunity (EEO) counselor within 30 days of the alleged violation. If the EEO counselor does not obtain a satisfactory resolution, you may then file a formal written complaint with your agency. The agency will institute an investigation and reach a final decision. In some situations, an existing union may agree to initiate the complaint and bring it to arbitration. (See 29 C.F.R. §1613.231(b) (1984).) In either case, an unsuccessful complainant may then appeal the agency decision to the EEOC's Office of Review and Appeals within 20 days or file a complaint in federal court within 30 days. If you appeal to the EEOC you must file a federal lawsuit within 30 days of the EEOC's final decision. Alternatively, you may file a federal court action 180 days after the first formal complaint with the agency if no decision has been made. While certain circumstances will justify an extension of these filing dates, the unwary complainant may inadvertently lose the right to proceed further if she does not meet the filing deadlines.

If a federal employee believes there has been retaliation in connection with filing a sexual harassment charge with the employer agency, this second allegation may be consolidated with the underlying sexual harassment charge, if consolidation is requested within 30 days from the date of retaliation. (29 C.F.R. § 1613.262(b) (1984).)

An employee filing a civil action in federal court must be sure to name the *head* of the department or agency not merely the department or agency itself. Failure to properly name the agency head in a civil action may result in the complaint being dismissed. (See *Cooper* v. *U.S. Postal Service*, 34 E.P.D. ¶34,524 (9th Cir. 1984), 42 U.S.C. § 717(d).) Once in federal court, the federal employee is entitled to the same standard of review as is a private employee litigant, that is, she is entitled to a trial *de novo* in which the court independently reviews the evidence in the case. (*Chandler* v. *Roudebush*, 425 U.S. 840 (1976).)

The federal employee who has *successfully* navigated the procedural pitfalls and successfully litigated a civil action in federal court has fewer remedies available by statute than her private employee counterpart. The scope and types of remedies are limited, as are the remedies for other Title VII plaintiffs, to back pay and injunctive relief. However, unlike private employee litigants, who can sue under other

statutes, federal employees can only sue under Title VII. Therefore, in most cases, the federal employee may not also plead a Civil Rights Act violation or tort action, hoping to recover compensatory and punitive damages. (See *Nolan* v. *Cleland*, 686 F.2d 806 (9th Cir. 1982).) The federal employee is entitled to recover attorney fees for attorney time expended during the administrative process. (29 C.F.R. § 1613.271(c) (1984).)

In spite of the procedural hurdles and potential for delay, a federal employee subjected to sexual harassment should be prepared to file a complaint and pursue legal remedies, to carefully observe filing deadlines, to persevere in the face of frustrating delays, and to maintain the conviction of being entitled both to compensation and to an end to the wrongful conduct.

National Labor Relations Board

Overview

The National Labor Relations Board (NLRB) is the federal agency that regulates relationships between employees, private employers and unions under the authority of the Labor Management Relations Act. It covers most non-supervisory employees in non-governmental jobs. It does not cover agricultural laborers, domestic workers or employees in some very small businesses. It excludes railway and airline employees. Union members are covered, as are non-members, regardless of whether there is a union at their work place.

> Section 7 of the Labor Management Relations Act states:
>
> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities. . . .

Section 8(a)(1) of the Act makes it an unfair labor practice for an employer to "interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7." Employers often violate this section by using sexual harassment to interfere with collective bargaining activity. For example, the NLRB may be the most effective agency to handle the case when your employer has used sexual harassment as retaliation for active participation in a union or for involvement in other collective activities.

You should also consider using NLRB's procedure if your situation resembles the following circumstances:

- your employer, or supervisor, retaliates against employees for complaining about or protesting against sexual harassment;
- your company has a collective bargaining agreement (contract between an employer and a union) that sets up guidelines for reporting sexual harassment complaints and your employer refuses to process grievances under those guidelines;
- your employer, or supervisor, responds to a complaint about sexual harassment in a manner that interferes with protected concerted activity.

The NLRB focuses its efforts on the *collective rights* of employees. In order to bring a case before the NLRB, at least two employees of the company must have complained to a supervisor regarding an abridgement of their rights, in response to which complaint the supervisor did not take appropriate action. For example, if employees covered by a union contract filed a grievance with management about sexual harassment and management retaliated against those employees by changing the conditions of their employment, those employees could seek help from the NLRB.

If you are a union member, you might get more direct action from your union. In this case, you should contact your local union representative or shop steward and follow established grievance procedures. If your union fails to act on your behalf, you may have grounds for a lawsuit against the union and/or a complaint with the NLRB. (See Appendix for a sample NLRB Charge Against Labor Organization or Its Agents.)

If you decide to take your case to the NLRB, be sure and try to conform to the NLRB's particular legal focus. The following are examples of the only types of situations the NLRB will investigate.

(1) "Concerted Activity"—Due to its primary concern for collective rights, you must show that you were involved in "concerted activity;" that is, two or more employees complained to a supervisor. The following are examples of concerted activities for which you could seek help from the NLRB:

—You went with another employee to a supervisor to discuss the problem of sexual harassment, or two or more employees engaged in some kind of protest about the problem.

—Several employees attempted to enforce a right guaranteed by a state or federal law and the company retaliated. For example, one woman, as spokesperson for several women, filed a sex discrimination charge with the EEOC and as a result she was harassed, demoted, or subjected to some disciplinary action.

(2) In addition to showing some concerted activity, you must be able to show that your employer engaged in at least one of the following illegal activities or unfair labor practices.

—Retaliation. The employee must show that the employer or supervisor tried to "interfere with, restrain, or coerce employees" because of their collective activity. Retaliation also occurs when an employer harasses, threatens, demotes or fails to promote an employee because s/he filed a sexual harassment charge.

—Interference. It is illegal for an employer to interfere with employees' efforts to organize themselves to deal with common problems. For example, if the employer attempted to interfere with lunchroom meetings about sexual harassment or other such activities, you might have a case for the NLRB.

—Discrimination. If the employer somehow knew that you were involved in some "concerted activity" and then treated you differently from other employees, in an attempt to discourage such activity, the differential treatment is discrimination. Most of the time discrimination is very subtle. For example, if you were passed over for promotion, received undesirable work assignments, or your supervisor criticized work that had previously been acceptable, then you might have been discriminated against.

Process

An unfair labor practice case begins by filing a charge. A charge may be filed by an employee, an employer, a labor organization, or any other person. You do not have to file the charge in person. A friend, even one who does not work for your employer, may file for you. In this way you may retain confidentiality. The charge forms are available at Regional Offices of the NLRB (a list of offices in California is included below). (See Appendix for a sample NLRB Charge against your employer.)

The statute of limitations for an NLRB claim requires that the claim be filed within 6 months after the unfair labor practice occurred. This means that your employer or union must have failed to satisfactorily settle the sexual harassment problem within 6 months prior to the filing.

If you have a friend file for you, your identity will not be revealed directly to the employer until the hearing. The person whose name is on the charge (you or your friend) is called the "charging party." An NLRB agent will be assigned to interview the charging party. There are no fees involved and you do not need an attorney. It is the obligation of the charging party to provide all available evidence. This is done by giving your sworn statements and documents to the NLRB and helping acquire statements from witnesses whose names you provide. At this point in the investigation, the NLRB is deciding whether to issue a complaint against the employer. The Board will ask the employer to provide information concerning the charges. If the employer does not respond, the Board may decide to issue a complaint based solely on your side of the story.

The Board may try to settle your claim either before or after a complaint is issued. You may be subjected to considerable pressure to accept settlement. At this point, you may want to hire an attorney to review any settlement offer and to assist in representing you before the NLRB. The Board has the power to accept a settlement without your approval. Your vigilance and vigorous advocacy may prevent a bad settlement or at least improve the terms of the settlement.

If a complaint is issued, and no settlement is reached between you and your employer, the Board will schedule a hearing before an Administrative Law Judge (ALJ). The Board will represent itself and present the case against the employer. Again you may want to hire an attorney of your own to represent your interests in the case but you do not have to. You can represent yourself or arrange to have someone else represent you. This person need not be a lawyer; a friend, law student, relative, co-worker or anyone at all is permitted to represent you. However, a lawyer usually is in a better position to protect your legal interests.

Relief

If the ALJ decides in your favor, the NLRB may order the employer to reinstate you, clear your personnel records, or give you back pay if you were fired, suspended, demoted or denied promotions as a result of the unfair labor practices. The NLRB has no power to award damages for emotional distress, pain and suffering, or damage to reputation. If you seek this type of redress, you must file a claim with other agencies such as California's DFEH or the Federal EEOC, or you must file a civil lawsuit.

If you pursue this course of action through the NLRB, be prepared to wait about a year and a half from the time you file the charge with NLRB until a decision is issued by the Administrative Law Judge. Since all parties to the hearing may appeal the judge's decision to the full NLRB, an additional six to twelve months may pass before the case reaches a conclusion.

If the Board does not issue a complaint, the person filing the charge may appeal to the General Counsel in Washington, D.C. If the General Counsel approves the Board's decision not to issue a complaint, there is no further appeal.

However, if one of the parties to the complaint is dissatisfied with the Board's order granting or denying the relief sought, that party may obtain review of the order in an appropriate federal court of appeals. The court of appeals may enforce the Board's order, change it, or return it to the Board for reconsideration. In some cases, the U.S. Supreme Court may be asked to review the decision of the court of appeals. The relatively small percentage of cases that are appealed to the courts may take an additional

one to two years for final resolution.

If the employer in any way retaliates against you or any other employee after being involved in an NLRB procedure, you should notify the NLRB immediately. Such retaliation is a serious separate unfair labor practice and one to which the Board responds more quickly and powerfully.

The shortcoming in pursuing a sexual harassment claim through the NLRB is that you are charging either management or your union for their failure to assist in the resolution of your complaint, rather than directly challenging the worker who harassed you. Because of this, the process is more useful as a method of encouraging your union and your employer to take sexual harassment seriously than it is as a method to resolve your own harassment problem.

NLRB Regional Offices in California

Federal Building, Room 13018
450 Golden Gate Avenue
San Francisco, CA 94102
415 556-0335

City National Bank Building
24th Floor
606 S. Olive Street
Los Angeles, CA 90014
213 688-5229

Federal Building, Room 12100
11000 Wilshire Blvd.
Los Angeles, CA 90024
213 824-7357

Breuner Building, 2nd Floor
2201 Broadway
Oakland, CA 94604
415 273-6122

Public Employment Relations Board

The Public Employment Relations Board (PERB), administers the California State Employee-Employer Relations Act (SEERA). Currently, however, a non-discriminatory work environment is not considered a bargainable issue and so, state civil service rank-and-file employees are not covered under a bargaining unit contract provision which would make discrimination a grievable issue. This means that state civil service employees must still utilize the state discrimination complaint process provided by the State Personnel Board and the Department of Fair Employment and Housing (see below).

However, if you are a state civil service employee and your union fails to provide you with representation on a discrimination complaint, you may file an unfair labor practice charge against that union with PERB within 6 months of the decision not to represent you.

PERB is headquartered in Sacramento (916/322-3088) and has regional offices in Sacramento (916/322-3198), San Francisco (415/557-1350), and Los Angeles (213/736-3127).

Department of Fair Employment and Housing/Fair Employment and Housing Commission

Overview

The Department of Fair Employment and Housing (DFEH) and the Fair Employment and Housing Commission (FEHC) are mandated to enforce California's civil rights laws in employment, housing, and public accommodations. Through an administrative process, DFEH receives, investigates, and conciliates complaints of discrimination. If DFEH determines that a case which cannot reach conciliation has merit, Department attorneys will prosecute the case before the FEHC. The FEHC's role is analogous to that of a judge; it hears the case, makes a final determination, and orders a remedy. The Commission's decisions are legally enforceable in court.

Under the Fair Employment and Housing Act "FEHA," (Cal. Gov. Code, §§ 12900 *et seq.*), the DFEH generally has jurisdiction over employers with five or more employees. As of January 1, 1985, however, jurisdiction has been extended *in harassment cases only* to employers with one or more employees. (Note that EEOC also has jurisdiction over employers with 15 or more employees. All cases from persons working for employers with 15 or more employees are also automatically filed with the EEOC by the DFEH—unless the complainant waives the simultaneous filing). If you have been sexually harassed on the job, and work for a company employing one or more but fewer than 15 employees, you can only file a complaint with DFEH under the FEHA.

You must file a complaint with DFEH within one year from the date of the discriminatory act. (Note that the time limit for filing with the EEOC is 180 days, or 240 days if you file with DFEH first.) The filing limits may be extended for 90 days following the expiration of that year if the employee first obtained knowledge of the *facts* of the alleged unlawful practice after the expiration of one year from the date on which the discriminatory acts occurred. If the discrimination continues over a period of time, the limit does not begin to run until the discrimination ends.

Under both state and federal law, there are two general categories of sexual harassment: work environment sexual harassment and conditional sexual harassment. Work environment sexual harassment refers to situations in which the acts of sexual harassment create a hostile, intimidating, or offensive work environment or otherwise interfere with an employee's work performance. There need not be any other loss of employment benefits resulting from the

sexual advances or other acts of sexual harassment in order to establish work environment harassment.

Conditional sexual harassment refers to situations in which the harassment results in the loss of a tangible job benefit, such as loss of the job itself through termination or failure to hire or promote. In these situations, the employer or one of its agents usually conditions the employment benefit on the employee's agreeing to or refusing the sexual advances. Typical kinds of conditional sexual harassment are: termination (or any other act of harm) because an employee refused, resisted or objected to sexual advances; constructive discharge, where the employee resigned because sexually harassing acts created intolerable working conditions; or failure to hire, promote, transfer because an employee or applicant refused, resisted, or objected to sexual advances.

Under the FEHC regulations (Tit. 2, Cal. Admin. Code, § 7287.6) and precedential decisions and under federal law, an employer is automatically liable (strict liability) for the sexually harassing acts committed by its agents or supervisors, regardless of whether the employer had knowledge of the harassment. There are no legally permissible defenses. If a non-supervisory employee is the harasser, the employer will be liable if it had actual knowledge of the harassment and failed to take immediate and appropriate corrective action. If the employer did not have actual knowledge, the Commission will still hold the employer liable *if* it should have known about the harassment by its non-supervisory employee. If an employer did not take reasonable steps to prevent harassment from occurring, the Commission, according to its regulations, will find that an employer should have known that harassment would occur. In addition, the FEHA requires that all employers take reasonable steps to prevent discrimination and harassment from occurring.

Process

Potential complainants must obtain and complete a pre-complaint questionnaire. (See Appendix for a sample DFEH Pre-Complaint Questionnaire, Instructions and Checklist.) Based on the responses to the questionnaire DFEH will then schedule and conduct an intake interview to determine whether there is sufficient information to take a charge. Intake decisions may be appealed to the consultant's supervisor, District Administrator, or Regional Administrator. The DFEH follows EEOC's complaint format. The written complaint, completed with the assistance of the DFEH consultant, should clearly identify each separate act of harm, the dates on which each one occurred, the circumstances of the sexual harassment, who the harasser is, what action, if any, was taken by the employer, and the employment relationship of the complainant to the employer. *Make sure to name all parties individually who are responsible for the harassment, since a failure to name them on the DFEH complaint form may result in the dismissal of a lawsuit alleging employment discrimination by those parties who were not named on the complaint.* Although not required, typical sexual harassment complaints will have at a minimum two acts of harm: work environment harassmment (which is a separate act of harm for which there is a separate remedy) and some form of conditional sexual harassment. (See Appendix for a sample DFEH Charge of Discrimination.)

After serving the complaint on the employer and requesting a written response and supplemental information, the DFEH will then attempt an informal resolution of the complaint. If settlement fails, the DFEH will conduct an investigation to determine whether there was a violation of the FEHA. This investigation may occur from six to eleven months after the complaint is filed. Based on the findings of the investigation, the DFEH will either dismiss the case or proceed to formal conciliation. If conciliation fails, the Department will issue an accusation and require the employer to answer the charges at a public hearing before an Administrative Law Judge (ALJ) acting on behalf of the FEHC. Under this process, the Fair Employment and Housing Commission (FEHC) is the body that decides the issues brought to hearing. The FEHC is made up of seven members appointed by the Governor. The FEHC may hold the hearing itself with a quorum of at least four commissioners, but since commissioners serve on a part-time basis, this function is normally delegated to the Office of Administrative Hearings (OAH), another state agency which provides hearing officers to conduct such hearings. OAH schedules a public hearing either at one of its offices in Sacramento, San Francisco, Los Angeles, or at a more appropriate local site in the state, if necessary or desirable.

By law, the Department must issue an accusation no later than one year from the date the complaint was filed. If the DFEH has not issued an accusation within 150 days from the date the complaint was filed, the complainant may obtain a right to sue letter and file a lawsuit in municipal or superior court. Under some circumstances, a complainant may request and obtain a right to sue letter before the 150 days has expired. Note, however, some courts may hold that a civil suit based on a right to sue letter obtained prior to 150 days is invalid for failure to exhaust administrative remedies. The courts require that the complainant show that she has exhausted her administrative remedies under the FEHA process. Generally, this requirement is met by obtaining a right to sue letter.

The FEHC also permits complainants to intervene as a "party" in cases going to hearing before ALJ's. This may be done by way of a motion to intervene which should be filed with the FEHC. Intervention,

with or without your own private attorney, will give you more control over your case. Once you have intervened, the DFEH cannot amend the accusation or drop any of your claims without your consent.

The ALJ, upon hearing the case, will send a proposed decision to the FEHC. The Commission will make the final ruling. The Commission may remand the case for further hearing, may request further legal briefing from all parties, may accept the ALJ's decision, or may accept the ALJ s decision but reduce the remedy. After receipt of additional legal briefs, the Commission usually issues its decision within three to six months.

The complaint process will require a substantial investment of time. You will have to attend the initial interviews and the informal conciliation attempt, as well as later conciliatory sessions and possibly court hearings. You may have to spend additional time answering any questions the DFEH investigator may have. It is helpful, but not required, to have an attorney assist you during these phases. Settlement of your case will not take place immediately. Finally, if your case is settled and you are awarded benefits, monetary or otherwise, it may still be some time before you actually receive the benefits you have been awarded.

Be aware that even if the DFEH accepts and investigates a case, there are no guarantees that it will find enough evidence to substantiate and legally prove a discrimination charge. In past DFEH discrimination cases, nearly half of the complaints filed were rejected after the initial screening process. Of the complaints pursued by the DFEH, 30 percent were resolved at various points in the process, 40 percent were dismissed, and 10 percent ended up going to court (the other 20 percent were administratively closed).

You should be prepared to have relevant aspects of your personal as well as professional life and history examined closely (and possibly publicly), especially if the case goes to a hearing before the FEHC. However, your own sexual conduct is not at issue except as to the alleged harasser. (See Code of Civil Proc., § 2036.1; Evid. Code, §§ 783 and 1106, and Gov. Code, §§ 11507.6 and 11513 in Appendix Y.)

One of the advantages of pursuing your rights through agencies such as the DFEH is that it is free. If you choose to take individual legal action, it will be expensive. Either route is likely to be time consuming and emotionally draining.

Relief

Once the FEHC determines that unlawful discrimination has occurred, several remedies are available. These include, but are not limited to: an order to cease and desist unlawful conduct; an order to hire, reinstate or promote the victim of discrimination; the payment of back pay—that is wages lost due to the occurrence of unlawful discrimination; front pay—the payment of future earnings lost and attributable to the unlawful discrimination. In addition, the FEHC has interpreted the broad authority given it in FEHA to include authority to award compensatory and punitive damages. (Note that the California Supreme Court has already ruled that compensatory and punitive damages may be awarded by a *court* under the FEHA.) Compensatory damages include money damages for actual out-of-pocket losses caused by the discrimination, as well as money damages to compensate the victim for emotional injury she may have suffered. Punitive damages are awarded by the FEHC in order to punish the respondent for conduct that is deliberate, egregious, oppressive or malicious. Such damages are also ordered in the hope that they may deter other employers from engaging in the same or similar kinds of unlawful conduct.

The FEHC also regularly issues orders to employers requiring that they receive training in the law and proper handling of sexual harassment complaints; it also generally issues "posting orders." A posting order is a notice displayed where all employees and applicants can see it, acknowledging the employer's wrongful conduct and describing employees' legal rights regarding discrimination.

Finally, the FEHC has also intrepreted the statute to include a provision for awarding attorney fees incurred in the investigation and hearing in certain limited circumstances. Although in general the DFEH prosecutes the complaint at the accusation stage free of charge, there are times when the interest of the individual complainant may differ from that of the DFEH, in which case the individual may need both to intervene as a party and to hire private counsel. The Commission has set standards for the conditions under which such attorney fees may be awarded (see *DFEH* v. *American Airlines* (1983) FEHC Dec. No. 83-15; *DFEH* v. *Louis Cairo* (1984) FEHC Dec. No. 84-04.)

The Department of Fair Employment and Housing Office Locations and District Administrators

(Zip Codes are in parenthesis)

BAKERSFIELD (93301)
1529 F Street
(805) 395-2728
John Ortiz

FRESNO (93721)
1900 Mariposa Mall, Suite 130
(209) 445-5373
Gaspar Oliveira

LOS ANGELES (90012-3112)
322 West First Street #2126
(213) 620-2610 (Central)
Annabella Hwa
(213) 620-3100 (County)
Wanda Kirby

OAKLAND (94607)
1111 Jackson Street
(415) 464-4095
Rudy Portis

SACRAMENTO
1201 I Street, Suite 214
(916) 445-9918
Martin Anaya

SAN FRANCISCO
30 Van Ness Avenue, 3rd Floor
(415) 557-2005
Kay Kirkland

SAN JOSE (95112)
888 North First Street #316
(408) 277-1264
Kay Kirland

SANTA ANA (92701)
28 Civic Center Plaza, Room 538
(714) 558-4159
Dorothy Davis

VENTURA (93003)
5720 Ralston Street, #302
(805) 654-4513
Ted Herzberg

SAN DIEGO (92101)
110 West C Street, #1702
(714) 237-7405
Linda Nolan

SAN BERNARDINO (92408)
375 W. Hospitality Lane, Room 280
(714) 383-4711
John Staffin

FEHC Sexual Harassment Precedential Decisions

DFEH v. *Ambylou Enterprises, Inc. (Wilson)* (1982) FEHC Dec. No. 82-06. Precedential [1982–83 CEB 3]. (First case in which the FEHC awarded compensatory or punitive damages for sexual harassment.)

Summary: *Complainant (C) sexually harassed by employer and terminated for refusal to submit to sexual demands.* Cumulative series of acts by president of Respondent (R) corporation, occurring daily for five months (sexual comments, unwanted touching and razor blade held to C's throat). Other employees corroborated testimony; some suffered similar harassment. Corporation, through actions of president, guilty of oppression, malice and conscious disregard of C's rights. No evidence of R's assets, potentially little or none. Award: Compensatory Damages: $15,000; Punitive Damages: $25,000; Back pay: $12,337.

***DFEH* v. *Dyna-Med, Inc. (Olander)* (1982) FEHC Dec. No. 82-14. Precedential [1982–83 CEB 6].**

Summary: *C terminated in retaliation for her filing of sex discrimination complaint.* C employed by R corporation approximately four years. Termination occurred a few hours after settlement of sex discrimination claim. R corporation liable for deliberate, vexatious acts of its officers. Assets are sufficient to meet award. R acted with knowledge of wrongfulness of acts. C suffered from deliberate harassment by general counsel and personal animosity displayed by president. No steps taken to correct "atmosphere of hostility."

Award: Punitive Damages: $7,500 (The Superior Court found that the FEHC *did* have authority to grant punitive damages; this was upheld by the San Diego Court of Appeal, but has been accepted for review by the California Supreme Court. Back pay: $4,470.

***DFEH* v. *Peralta College District (Brown)* (1983) FEHC Dec. No. 83-05. Non-precedential but pending review in State Supreme Court on issue of compensatory damages. Court of Appeal affirmed FEHC's authority to award compensatory damages.**

Summary: *C sexually harassed by employer.* C, secretary, suffered continuous verbal and physical sexual harassment by new boss for six months. Acts included: asking highly personal questions, intentionally feeling bra strap, rubbing C's hair. Some acts occurred in presence of C's children. Terminated for "incompetence," although previous boss at same job had been completely satisfied with C's job performance. R college district liable for supervisor's actions.

Award: Compensatory Damages: $20,000 (pending in State Supreme Court on issue of Commission's authority to award compensatory damages.); Out-of-pocket expenses: $374.55. R must develop and disseminate policy on sexual harassment, give training program, and inform all employees of these policies and procedures.

***DFEH* v. *Fresno Hilton Hotel (Burns)* (1984) FEHC Dec. No. 84-03. Precedential [1984–85 CEB 2]. Review pending in Court of Appeal.**

Summary: *R's sexual harassment of C created hostile work environment.* C suffered verbal and physical sexual harassment by supervisor on a daily basis for nearly a year. Acts created hostile work environment. Two other women employees made similar complaints to management about same supervisor. R's management refused to remedy situation and ratified supervisor's conduct. Supervisor's oppressive and malicious behavior included "barrage of clearly unwelcome sexual advances." R's gross earnings in 1982 = $3.5 million.

Award: Compensatory Damages: $15,000 (pending in Court of Appeal on issue of Commission's authority to award compensatory and punitive damages); Punitive Damages: $20,000; Posting Order.

***DFEH* v. *Donald Schriver, Inc. (Ehlers)* FEHC Dec. No. 84-07. Precedential [1984–85 CEB 4]. Review pending in Court of Appeal.**

Summary: *C sexually harassed by supervisor and terminated for refusal to submit to sexual demands.* Cumulative series of acts by bar and restaurant manager, occurring almost daily for five months, included barrage of explicit sexual comments and demands, often while co-workers or customers were present. Acts created hostile work environment. C complained to R's general manager; unlawful conduct ceased. However, approximately one week later, C fired by harasser on pretext. R corporation liable for harasser's actions as a supervisor. Both harassment and resultant termination found malicious and oppressive. R corporation liable for punitive damages because 1) harasser was its "managing agent" and 2) R ratified his conduct.

Award: Compensatory Damages: $7,500; Punitive Damages: $20,000; Back pay: $12,559.28. (Pending in Court of Appeal on issue of authority for compensatory and punitive damage awards.)

***DFEH* v. *Jack's Restaurant and Jack Schat, Owner (Johnson)* (1984) FEHC Dec. No. 84-08. Precendential (1984–85 CEB 5). Review pending in Court of Appeal.**

Summary: *C sexually harassed by her employer and constructively discharged.* For nearly a year on numerous occasions R president made sexually explicit comments such as "you look good enough to rape," and physically harassed C, female employee. Acts often occurred in front of customers. R threatened C's boyfriend to such an extent that he filed a police report. Unlawful acts were direct cause of C's resignation. R admitted to DFEH investigator that he has been "slapping women on the ass for 20 years and I'll continue to do it." Malice shown by R's persistence in deeply offensive conduct after requests to stop, and from abusive authority over victim. R's president is sole owner of R restaurant, three other shops, property worth $150,000–$160,000 and personal residence.

Award: Compensatory Damages: $20,000 (on appeal); Punitive Damages: $40,000; Back pay: $3,520. (Pending in Court of Appeal on amount of compensatory damages.)

***DFEH* v. *Bee Hive Answering Service (Dowing)* (1984) FEHC Dec. No. 84-16. Precedential [1984–85 CEB 8].**

Summary: *C sexually harassed, and given extra duties and hours and terminated for rejecting and reporting harasser.* Over one-month period until her firing, complainant was subjected to continual domineering sexual advances, unwanted sexual comments and touching, and angry threats of longer hours and harder work by her supervisor, a partner in respondent Answering Service. The partner's conduct made the complainant's work environment hostile and oppressive. Complainant objected to the conduct and refused the sexual advances, and as a result was forced by the partner to work very extensive hours and perform extra duties and was ultimately fired by him after she complained to his partner. He had done the same to numerous other women working for him. Respondent Answering Service was held liable for the partner's acts as a supervisor and since he was held to be an agent of respondent Answering Service he himself was found liable as an employer. The partner's oppressive and vindictive conduct exploited and abused his authority over complainant. This conduct was meant to vex, injure, and harass complainant and ignored her right to be free of such conduct, and was, thus, malicious.

Award: Compensatory Damages: $35,000; Punitive Damages: $50,000; Back pay: $1,207.66.

***DFEH* v. *Hart and Starkey, Inc. and Garry Hart (Perez, Reeder, Shaw-Watson, Shaw)* (1984) FEHC Dec. No. 84-23. Precedential [1984–85 CEB 9].**

Summary: *C's sexually harassed and constructively discharged.* Complainants were subjected to unwanted touching, sexual comments and gestures, explicit propositions and offers of better treatment in return for compliance, by the manager of one of respondent's two pizza parlors. The manager's conduct

included handling and pinching complainant's breasts and buttocks, rubbing his groin into their buttocks, blocking their movement, and lewd gestures and comments about sexual activities and complainant's bodies. The manager's conduct made complainants' work environment hostile, oppressive, offensive and intimidating, and all left respondent's employ because of it. Respondents Hart and Starkey were held liable for manager's conduct as a supervisor. Further, respondent Hart, president of Hart and Starkey, participated in some of the manager's conduct and condoned the rest. Hart was found to be an agent of Hart and Starkey and, thus, himself liable as an "employer." Manager's persistence in deeply offensive conduct from a position of power over his victims was oppressive and malicious. Respondents Hart and Starkey liable for punitive damages because Hart, managing agent, ratified manager's conduct. Hart personally liable for punitive damages because his participation in and failure to correct manager's conduct was itself oppressive and malicious. Respondent's wealth not considered in assessing punitive damages.

Award: Compensatory Damages: $35,000 to each of three complainants and $30,000 to the others; Punitive Damages: $10,000 to each; Back pay and medicals: approximately $21,000 for all complainants.

***DFEH* v. *La Victoria Tortilleria, Inc. (Carillo)* (1985) FEHC Dec. No. 85-04. Precedential [1984–85 CEB 13].**

Summary: *C sexually harassed.* Complainant worked first for La Victoria Tortilleria (LVT), a sole proprietorship. The business then became a corporation. A manager of LVT and later Vice President of the corporation, regularly made vulgar and sexually suggestive remarks to and about complainant, and to complainant about other women. He called complainant a whore, made comments about her "sucking cock" and "jacking him off," put his finger to her nose and told her that was how her aunt's "ass smelled," and, finally, tried to induce a male employee to grab complainant's "pussy." His remarks about other women were similar. His sexual harassment made complainant's work environment hostile, offensive, intimidating and oppressive. LVT is liable for manager's conduct as a supervisor before the incorporation. The corporation is liable for manager's conduct as a supervisor after the incorporation, and for his prior conduct as a successor employer. Manager was an agent of LVT and the corporation, and was thus liable as a "employer." Manager's conduct was malicious and oppressive; he intended to vex, harass, and annoy complainant and subjected her to hardship in conscious disregard of her rights. The corporation is liable for punitive damages for manager's conduct as its managing agent. Corporate and owners assets considered in award.

Award: Compensatory Damages: $40,000 (LVT, corporation, manager jointly and severally liable for $20,000; manager solely liable for other $20,000); Punitive Damages: $60,000 (LVT, corporation, manager jointly and severally liable for $10,000; manager solely liable for $50,000); Respondent corporation required to develop policy and permit training of employees. (Petition for Writ of Mandate granted. Pending Ct. of Appeal.).

***DFEH* v. *Del Mar Avionics and Coy Wall (Thompkins)* (1985) FEHC Dec. No. 85-19. Precedential [1985–86 CEB 16].**

Summary: *C racially and sexually harassed and reprimanded and given a different work assignment and constructively discharged.* C was subjected by her immediate supervisor, an agent of R, to a regular stream of sexual and racial comments culminating in a vulgar verbal assault in which he called complainant into his office to discuss her work performance and then said to her: "What I should do is slap you upside the head . . . I'm only kidding." "Have you ever had your pants taken down and been given a hard spanking on your bare butt?" "What you need is to be fucked for eight straight hours with a ten-minute break in the middle for a drink. Then you'd know what a real man is." After complainant reported the incident, the supervisor made threats to force her to quit, changed her work assignment, and made complainant's work environment hostile, oppressive and offensive. The supervisor's conduct made complainant increasingly angry and upset and caused her to hate a job which she had previously loved. After her requests for a transfer were repeatedly ignored, complainant quit because the working conditions had become so intolerable that complainant felt forced to resign (constructive discharge). Supervisor was found to have the requisite intent to force complainant out. He had threatened her, taken punitive actions against her and told her "you're nothing but a nigger anyway. That's why you're in this company." The supervisor should have known that the sum of his earlier harassment of complainant would compel her to leave. A reasonable person in complainant's circumstances would plainly have quit under the pressure of the supervisor's conduct. Del Mar Avionics and the supervisor were each held liable for the adverse effect of the supervisor's conduct and both Del Mar and the supervisor were held liable as employers. The harassment by supervisor against complainant was held to be inherently oppressive and malicious and imposed upon its intended victim with an intent to vex, injure and annoy complainant. Further, supervisor knew of complainant's rights to be free of harassment and to complain of it without fear of retaliation and acted with malice and oppression in denying those rights to complainant. Thus, supervisor was held liable for punitive damages due to the fact that his conduct was sufficiently deliber-

ate, egregious, and inexcusable. Del Mar not liable for punitive damages, since supervisor not held to be an officer, director, or managing agent of the corporation because there was no evidence of supervisor's real authority to discharge complainant or to have the most immediate control over the termination decision (his personnel recommendations had to be ratified by his several supervisors as well as by Del Mar's Personnel Office).

Award: Compensatory Damages: $15,000; Punitive Damages; $35,000 to be paid by supervisor; Back pay: $13,593; Respondent corporation required to develop and post policy and permit training of employees. (Petition for Writ of Mandate granted on other grounds).

How to Write a DFEH/EEOC Complaint (The agency consultants will assist in preparing the statement)

Section I: Statement of personal harm: This section should identify and state clearly all acts of harm and the dates on which they occurred. Each act of harm for which there is a separate remedy should be stated separately. In addition, state the complainant's job title, date of hire, and salary at the time the alleged discriminatory acts of harm occurred. See examples below.

Section II: Respondent's reason for the adverse action: State the reason given by the employer for each adverse action or act of harm and the name and title of the person who gave the reason. See examples below. (In a small number of complaints, such as cases in which work environment harassment is the only act of harm, there will probably be no statements by the respondent or respondent's agent that will fit section II. When this occurs, simply omit Section II and do not number Sections I and III.)

Section III: Statement of discrimination: Section III has two parts. The first part usually states a causal connection ("because of") between the act(s) of harm (identified in Section I above) and the complainant's "protected group basis" (sex) or "protected activity" (filing a complaint). This first statement, however, may be different in cases in which the legal standard to be proven is different from the causal link standard (e.g., as in work environment harassment cases). All acts of harm listed in Section I should be included in the first part of Section III. See examples below.

The second part of Section III contains the supportive statements or the complainant's reasons for believing that the act(s) of harm occurred because of the complainant's protected group status or protected activity. These supportive statements should reflect some relevant evidence that will show how the legal standard for each adverse action can be met. All reasons should be stated in the order of sequence that the acts of harm are mentioned in the complaint. Each statement should be written so that it is clear which reason logically supports which act of harm.

When stating the names of individuals in the complaint, the DFEH practice is to name only those people responsible for the adverse actions complained of. At times, the DFEH may be resistant to naming personally, as individuals, the harasser and/or supervisors involved. Since specifically naming such individuals will result in their personal liability for damages along with the employer (and increase chances of collecting on the final judgment), *it is important to insist on naming them* in the complaint. The names of persons who are being compared to the complainant or who are witnesses are usually not included. See examples below.

Examples of Model Complaints

Example 1. Model Complaint—One act of Harm: Layoff

I. On 5/11/83, I was laid off from my position as an Associate Program Analyst. I was hired as a Junior Program Analyst on 2/2/79. I was sexually harassed on 3/24/80 and subsequently complained. At the time of my layoff, I was earning $20,000 a year.

II. John Henry, Director of the Program Analysis Unit, told me that I was being laid off because of a reorganization of the company.

III. I believe that I was laid off because of my sexual harassment complaint for the following reasons:

1. Of the four Associate Program Analysts, I was the only woman and the only person laid off.
2. Although company policy states that all layoffs are to be done in accordance with seniority, one of the men has less seniority than I and he was not laid off.
3. Two weeks after my layoff, the company placed on advertisement in the local newspaper for an Associate Program Analyst.

Example 2. Model Complaint—Two Acts of Harm: Denial of Promotion, Termination

I. On 2/2/84, I was denied a promotion to Senior Accountant. On 2/29/84, I was terminated from my position as an Accountant. I was hired as a Junior Accountant in January 1965. At the time of the denial of promotion and termination, I was earning $30,000 a year.

II. Steve Steel, Manager of the Accounting Department, told me that I was being denied the promotion because I was not as qualified as the person selected. He told me that I was being terminated because I had been absent too often.

III. I believe that I was denied the promotion and

was terminated because I refused a sexual advance from Steve Steel and filed a sexual harassment complaint, for the following reasons:

1. I applied for the available position of Senior Accountant for which I am qualified.
2. A male accountant less qualified than I am was selected for the position.
3. I was sexually propositioned by Steve Steel and filed a complaint against him.
4. I am the only female in the Accounting Department and know of male employees who have been absent more often than I have and have not been terminated.

Example 3. Model Complaint—Three Acts of Harm: Denial of Promotion, Denial of Transfer, Constructive Discharge

I. On February 1, 1984, I was denied a promotion to Supervising Clerk at $7.50 an hour. On February 29, 1984, I was denied a transfer as a Clerk from the Lakeview to the Belmont store. On March 1, 1984, I was constructively discharged (forced to quit) from my position of Clerk at $6 an hour. I was hired as a Clerk in May 1979.

II. Bobby Wright, Manager of the Lakeview store, told me that I was denied the promotion because there had been customer complaints about me. He gave me no reason for the denial of transfer.

III. I believe that I was denied the promotion and transfer because of my sex (female) and my claim of sexual harassment and that I was constructively discharged (forced to resign) because of these discriminatory denials. My belief is based on the following:

1. I applied for the available position of Supervising Clerk, for which I am qualified.
2. A less qualified man was selected for the position.
3. I was sexually harassed by Bobby Bright and filed a complaint against him.
4. I have never been informed about any customer complaints about me.
5. Men with less seniority have been allowed to transfer to other stores.
6. The discriminatory denial of promotion and transfer created working conditions so intolerable that I was forced to resign.

Example 4. Model Complaint—Retaliation: Termination

I. On 3/1/84 I was terminated from my position as a secretary. I was hired as a secretary in June 1982. At the time of my termination, I was earning $16,000 a year.

II. I was told by James Klean, Manager of the Personnel Department, that I was being terminated because of poor performance.

III. I believe that I was terminated in retaliation for my complaints of sexual harassment. My belief is based on the following:

1. Shortly after I complained to my supervisor about what I believed to be sexual harassment, I was terminated.
2. Prior to my complaining about sexual harassment, my work performance was praised by my supervisor who gave me more than satisfactory performance reviews.

Example Model Complaint

I. I was hired by the respondent on July 2, 1984 at a salary of $4 an hour. From July 2, 1984 to August 23, 1984, I was continuously sexually harassed in the course of my employment as a waitress. On August 2, 1984, I was terminated from my position as a waitress.

II. Jim Smith, manager of the restaurant, told me that I was being terminated because of performance problems.

III. I believe that I was sexually harassed, which is discrimination on the basis of sex (female), and also believe that I was terminated because I refused the sexual advances. My belief is based on the following:

1. I was sexaully harassed by manager Jim Smith on a daily basis from July 2 until August 23, 1984. The harassment was of a verbal and physical nature which included unwanted suggestive sexual remarks, sexual advances, and unwanted touching of my body. This harassment created a hostile working atmosphere.
2. Although I had no job performance problems, after I refused Jim Smith's advances, I was terminated.

Administrative Hearings

Overview

issuance of an accusation or appeal of an adverse action commences a formal process which culminates in a hearing under the Administrative Procedure Act (APA) (Gov. Code, § 11500, *et seq.*).

The accusation is a document that sets forth the charges or allegations at issue. It should set forth specifically what laws or regulations were allegedly violated as well as the relief sought. It is prepared by the DFEH and served on the respondent. The purpose is to notify the respondent about the charges. The defending party may then request a hearing. The accusation "packet" should include a notice of defense and a petition for hearing or at least a description of what is required to request a hearing, when to send it and how soon it must be filed. There may be other information, such as laws governing

discovery of records (certain laws are required to be distributed under the APA). If, after being served with the charges, the respondent wants to contest the charges, a hearing may be requested within the legal time limit.

Hearings may start 3 to 6 months after a referral. Hearings that are required to commence earlier (e.g., FEHC hearings must begin within 90 days, as well as actions involving suspension orders) will begin within the required time frame. The Office of Administrative Hearings (OAH) of the Department of General Services hears matters from approximately twenty-five agencies. The procedure with all agencies is similar.

The Parties

There are generally two parties at a hearing, although there may be more. The party setting forth the charges that are the basis for the hearing is the agency or the injured party (complainant). The person or employer accused of violating the law is generally known as the respondent. The applicant or employee who feels s/he has been injured by the violator is also known as the "complainant" or "real party in interest." Generally the complainant's case is presented first.

Pre-Hearing

At the same time as filing a notice of defense/request for hearing, or shortly thereafter, any party, under the APA, can request discovery of the names of witnesses the other party intends to call to testify and such items as written statements, investigative reports or tape recordings which are in the possession or under the control of the other party that are relevant to the proceeding. The request for discovery, under the APA, must be made within 30 days after receipt of the additional pleading and within 15 days after receipt of any additional pleadings (further charges) (Gov. Code, § 11507.6).

Subpoenas may be issued to compel the presence of witnesses and to require a witness to bring to the hearing records or items in the custody or control of the witness (*subpoena duces tecum*) (Gov. Code, § 11510). In order to get a subpoena or *subpoena duces tecum*, the attorney should apply to the hearing office with jurisdiction for the hearing, or the agency, if it is conducting the hearing itself.

The Hearing

Administrative hearings are conducted to resolve disputes, almost always between a government agency and individuals, businesses or other governmental units.

Administrative hearings are considered to be quasi-judicial proceedings. Their purpose is much like that of a trial—to take evidence and decide the issues raised. There is no jury. A hearing officer, called an Administrative Law Judge, or ALJ, presides.

The OAH hearing will be conducted much like a trial. The agency or complainant will proceed first with its witnesses and documents, and will set forth proof of the allegations. The respondent then has an opportunity to defend its actions. The agency must prove a violation of the law by a preponderance of all of the evidence (that is, more than 50% in favor of finding a violation).

The Judge

The ALJ is an attorney with a minimum of five years of law practice in California prior to becoming an ALJ. The ALJ hears the evidence, rules on objections, maintains order and procedure, and prepares a proposed decision based on the evidence and law. The proposed decision is submitted for adoption, generally, to the FEHC or SPB. The ALJ will submit the decision within 30 days after the hearing closes and final written argument, if any, is received. The Commission or the Board can adopt the proposed decision as prepared by the ALJ or adopt it and reduce the remedy. (Gov. Code, § 11517.) If the Commission or Board decides to reject the ALJ's decision and write its own instead, it must notify the parties of the opportunity to submit further written legal argument. The Commission or Board is required to let the parties know whether it will adopt or reject the ALJ's decision within 100 days after receiving both the ALJ's proposed decision and a transcript of the hearing. Following receipt of further argument from the parties, the Commission or Board will issue a final decision. A dissatisfied party may appeal the Commission or Board's decision to the Superior Court.

Witnesses

Witnesses are sworn or affirmed before testimony is taken and their testimony is subject to perjury laws. The party calling the witness asks its questions first. This is called direct examination. The other party will then be permitted to cross-examine the witness. Under the APA, cross-examination may be on any relevant subject, even if (unlike civil court trials) not brought up during direct examination. The first party will then be permitted re-direct, or a second chance to question the witness. The questions may be limited to issues brought up by other parties on cross-examination. After re-direct, other parties will be permitted re-cross examination, which may be limited to issues brought up on re-direct. Any further questioning is at the discretion of the judge.

Witnesses must be asked questions. It is not the time for questioners to make statements. Only testimony, that is, statements made by the witness under oath, become evidence, along with exhibits introduced by the parties.

Objections

Objections must be made in a timely fashion. If a question asked is leading (suggestive of the answer sought) and should not be, the objection should be raised before the answer is given. Generally, an untimely objection will be overruled (denied). In ruling on some objections, however, the ALJ has discretion to admit or refuse to admit the evidence, depending on the particular circumstances and the potential importance of the evidence weighed against its possible undue prejudicial effect and harm. Common objections at administrative hearings include: leading the witness (asking a question on direct which suggests its own answer), hearsay, lack of proper foundation, lack of relevance, and lack of expertise.

Leading questions

Generally, there are two types of questions—leading and non-leading questions. On direct examination and re-direct, a witness may usually be asked only non-leading questions. (There are some exceptions, however.) On cross-examination, leading questions are permitted.

Parties call witnesses to prove part of their case or to disprove the case of their opponent. The witness' knowledge and credibility (honesty, ability to recall) are being offered when a witness is called. Therefore, it is important for the judge to hear what the witness has to say. Non-leading questions are questions that bring out what the witness knows without suggesting the answer, while leading questions suggest an answer.

For example, "Where were you on July 1?" is normally not leading. It allows the witness to tell what s/he knows. "Were you at my house on July 1?" suggests to the witness where s/he might have been July 1. It is leading. In addition, since the witness will answer "yes" or "no," or possibly "I don't know," the judge will not have been able to tell what the witness recalls. Below are some other examples of leading and non-leading questions. Keep in mind that on direct examination, the ALJ wants to hear evidence from the *witness*.

Non-leading questions:

Who did you see at the library?
What was she doing?
What was she wearing?
In what part of the library did you see her?

Corresponding leading questions:

Did you see Jane Smith at the library?
Was she reading a book?
Was she wearing a red blouse?
Wasn't she in the California Room?

On cross-examination, the opposing party has the right to challenge (and the goal of challenging) the witness' credibility and thus her/his testimony. Under these circumstances, leading questions are permitted. So, for example, when a witness testified that from her front window she saw a yellow car on the street, proper cross-examination might include questions such as: "Wasn't the car actually orange?" "Isn't it true that three pine trees at the curb block the view from your window?" "Isn't it true that at the time you saw the car it was too dark to discern any color?"

Exceptions

Leading questions on direct examination are often permitted for "preliminary" matters. These questions would be asked to speed the proceeding and would involve non-controversial matters. Such questions might include (if not controverted): "You live at 13 Oak Street, don't you?" "Did you graduate from UCLA in 1968?"

In addition, leading questions on direct examination may be asked of adverse witnesses. An adverse witness is someone whose interest is opposed to the party calling him or her to testify. Leading questions on direct examination also may be permitted when questioning an expert witness or to assist a witness after the witness has been unable to answer a non-leading question.

Hearsay (Editor's note: This section is included for the sake of completeness. The reader is cautioned, however that even attorneys trained in the law have difficulty understanding the concept of hearsay and its exceptions. Further, hearsay rules are not strictly followed in administrative hearings. The advice of legal counsel is invaluable in this area.)

Hearsay is a statement made out of court which is offered to prove the truth of the matter asserted. In court, but not at administrative hearings, an objection can be made to hearsay testimony. This objection is to assure that evidence is reliable, that it is taken under oath and subject to the scrutiny of cross-examination. Hearsay can be verbal, written, or nonverbal conduct intended to communicate. For example, testifying that an out of court declarant (person making the statement) shrugged her shoulders to indicate lack of knowledge is an example of a nonverbal hearsay statement if the purpose is to prove the declarant lacks knowledge. Another example of hearsay would be to answer a question such as, "What size is your office?" by testifying "The rental agreement said that it is 150 square feet." If the purpose is to learn the size of the office, the witness' direct observation or own measurement is better. S/he can be questioned on how the measurement was made and the accuracy of the testimony can be evaluated. There is no way, at the hearing, to find out if the rental agreement is accurate.

While hearsay is inadmissible in a court proceed-

ing, under the APA, hearsay is admissible. However, a finding of fact cannot be based solely on hearsay. It must be corroborated by other direct evidence.

Remember that a statement is only hearsay if it is offered to prove the truth of the matter asserted. If a statement is offered merely to show that it was made, it is admissible, even in court. In this example, if the issue is whether the rental agent misled the tenant about the office size, testimony that the agent wrote into the lease that the office was 150 square feet is admissible. Here, the concern is not the size in actuality, but the agent's representation of the size.

The witness can be cross-examined about what s/he heard, just as witnesses are examined about what they saw. Another example of testimony that may or may not be hearsay is the following:

Question: What did Mr. Jones say?

Answer: He said, "I want to fly to Chicago." The answer would be hearsay if offered to prove that Jones wanted to fly to Chicago. It would not be hearsay if offered to prove that Jones speaks English.

Exceptions to the Hearsay Rule

The hearsay rule has many exceptions. While writings are generally hearsay where introduced to prove the truth of what is stated (as in an ad or a letter), since the author cannot be cross-examined, there are many writings that would be admissible under exceptions to the hearsay rule. The hearsay rule is designed to assure reliable testimony.

The exceptions to the hearsay rule have been those statements considered to have inherent reliability. Such writings might be official transcripts of proceedings, birth and death certificates and certain other government records, business records maintained in the ordinary course of business (not those prepared for litigation, but those which are used to make business decisions, such as sales records, accounting statements) or certain church certificates related to birth, death, marriage, etc.

Another hearsay exception is for admissions. Admissions may be verbal, written, or non-verbal conduct. Admissions of a party in a traffic accident, such as "I didn't see the red light when I entered the intersection," or "Don't worry about the damage, I'll pay for it," are considered reliable because people do not ordinarily accept blame for something they did not do. Other admissible hearsay statements include prior inconsistent statements, a declaration by a dying person about the manner of death based on personal knowledge, or a description of non-verbal conduct. An example of an inconsistent statement is as follows. At the hearing, Witness X testifies: "The construction was shabby. The door and the paint are uneven." Y then testifies: "A month ago, X told me he was pleased with the work and recommended the contractor to me." Y's testimony is admissible because it shows X made a prior statement that was inconsistent with X's sworn testimony.

An example of a dying declaration is where Witness X testifies: "Y told me just moments before his death that Sally had given him some capsules to ingest which made him feel weak and unable to continue standing. He said he thought it was poison."

An example of non-verbal conduct that would be admissible is Witness X testifies: "I saw Sam wave at Joe." This testimony is admissible to establish that Sam recognized Joe.

Lack of Foundation

Suppose a witness is asked, "How cold was the refrigerator?" The witness answers, "38 degrees." This answer is objectionable because of lack of foundation in that it has not been established how the witness knew it was 38 degrees. To avoid this objection, the questioning should have proceeded something like this:

Q: Were you able to determine what the temperature was?

A: Yes.

Q: How did you do that?

A: I looked at the thermometer that regulates the refrigerator temperature.

Q: And what did the thermometer read?

A: 38 degrees.

Note, however, that there may be further objections, depending on whether the thermometer is accurate and whether the witness was able to read it; for example, was it readily visible? Such further objections would only be appropriate, especially in an administrative hearing, where the precise number is important.

An objection based on lack of foundation must state what is missing. Generally, such an objection would be based on a lack of personal knowledge of the witness, lack of expertise in the subject area, or lack of knowledge as to who prepared a document or the source of information in the document.

Irrelevance

In order for information or material to be received as evidence, it must be relevant. That is, it must have some tendency to prove or disprove any disputed fact that is of consequence to the determination of the action. Example: If you wanted to establish that Linda is good at math, it would be relevant to prove she received an "A" in math last semester. It would not be relevant to offer evidence that her overall average was a "B" or that she received an "A" in history; neither tends to establish her math skills. Or, consider a charge that an electrician did poor work on a construction project. Testimony that the electrician did a good job on a previous project would be relevant if the issue was competence to do the work.

It would not be relevant to prove or disprove his actual performance on the second project.

Lack of Expertise (Improper Opinion)

Generally, witnesses may only testify about what they did, saw, heard, smelled, felt, tasted, etc. In certain instances, laypersons may give opinion testimony, if it is the kind that is necessary to explain testimony or perception. For example, a layperson may be able to describe someone as looking "drunk" although the witness is not an expert on alcoholism. In this situation it is an opinion to state, "He was drunk." However, it is not an opinion to state, "He staggered, tripped over his feet, had slurred speech."

For the most part, in order to give an opinion, it must be shown that the witness is an expert in the subject area. A cardiac surgeon would generally be able to give an opinion about the quality of cardiac surgery done by another. A person who had been an electrician for several years would probably qualify as an expert in certain types of wiring and would be able to give opinion testimony as to the quality or necessity of that electrical work.

Experts are allowed to give opinions where the subject area is one requiring special knowledge. The purpose of the opinions is to aid the trier of fact (generally the ALJ in an administrative hearing) in understanding "technical" matters.

In order to ask opinion questions of an expert, the witness' qualifications must first be established by laying a proper foundation. This is generally done by asking the witness to describe his or her education, training, and work experience. This gives the judge the opportunity to determine whether the witness is qualified to offer an opinion worth considering.

The California State Civil Service Discrimination Complaint Process

Overview

The California State Personnel Board (SPB) has the authority under constitutional mandate and statute to investigate and adjudicate complaints of discrimination from state civil service employees. In March 1976, the SPB approved a statewide procedure for resolving complaints of discrimination in state employment (see Appendix for SPB sexual harassment policy, SPB Rules 547, 547.1, and 547.2, and Gov. Code, §§ 18701, 19572, 19630, 19682, 19702 and 19702.1). The SPB regulations and guidelines governing the processing of complaints of discrimination, including harassment, based on race, color, creed, sex (sexual harassment as well), national origin, ancestry, age, marital status, sexual orientation, or handicap apply to employees in all state departments, agencies, and offices in the civil service regardless of type of appointment, as well as to all applicants for positions in the state civil service. The rules do not apply to persons employed under the exempt service, to California State University (CSU) and to the University of California (UC) System employees. However, CSU System employees may elect to appeal adverse actions to the State Personnel Board.

The Board claimed that it has exclusive authority over all State civil service employees. This led to a jurisdictional dispute with the State Department of Fair Employment and Housing (DFEH), which is the department established in California to handle complaints of discrimination from all workers throughout the state whether public (e.g. state or local government) or private, and the Fair Employment and Housing Commission (FEHC), the agency which decides the cases. The issue over which agency has the authority to make determinations on discrimination complaints from state civil service employees has recently been decided by the California Supreme Court. At present, state civil service employees may take their complaints to the DFEH as well as SPB. However, the particular arrangements between the two agencies regarding exactly how complaints will be handled have yet to be finalized. It seems likely that the agency where the complaint is filed first will have primary responsibility for complaint processing.

If you as a state employee choose to also file with the EEOC, remember to do so within 240 days of the last sexual harassment incident. It also may serve to protect your rights to file a charge of discrimination with the DFEH, even if you are attempting a resolution through the state civil service process so that if you decide to sue in state court you will have a cause of action for an unlawful employment practice(s) under the FEHA and can request compensatory and punitive damages.

The Steps in the State Civil Service Discrimination Complaint Process

The state civil service discrimination complaint process is basically a two-tier internal process, with the complaint first being investigated by the department and if not resolved, appealed to the State Personnel Board for investigation and decision. The department or "appointing power" has 180 days (6 months) to attempt resolution and likewise, the SPB has another 180 days on appeal.

In the complaint handling process, the first step is generally to attempt informal resolution. If such resolution cannot be made, the complaint may be formally filed within the respondent's department. The practice of requiring the majority of cases to proceed through the departmental investigation is based on an interpretation of SPB Laws and Rules (Article 25, Section 547.1) which states:

> A complaint against an action, decision, policy, or condition which is within the authority of the

appointing power to resolve shall be first considered by the appointing power before referral to the Personnel Board.

This section continues:

> A complaint of discrimination which cannot be resolved by the appointing power, or which is not within the authority of the appointing power to resolve, shall be filed with the Personnel Board as an appeal.

In certain cases, then, the complaint may be directly filed with the SPB.

Direct Appeal to the SPB in Lieu of Departmental Processing

In a limited number of circumstances the SPB will consider employee requests to have their complaints filed directly with the SPB and reviewed by its Appeals Division or staff panel. The cases will be decided by Board staff on a case-by-case basis.

The following circumstances may warrant direct filing with the Appeals Division:

1. The complainant alleges discriminatory treatment, action or statement by the departmental director, deputy director, or a member of the departmental executive staff; or indicates that the involvement of any of these staff members would preclude an unbiased review of a complaint.
2. The complainant alleges that a current SPB rule, or published policy is discriminatory; and that the department's policy or actions in conformity with the Board policy or rule, or the department's formal written policy is in violation of state non-discrimination policies;
3. The complainant provides evidence that the investigative or management practices of the department result or will result in reprisal, retaliation, denial of due process or an unwarranted loss of personal privacy, or where the departmental policy is contrary to state policy;
4. The complainant alleges clear evidence of reprisal for opposing illegal employment discrimination practices;
5. Discrimination complaints from employees in the smallest state agencies or departments, where trained resources are not available to provide a comprehensive investigation or where a department is unable to provide a requested remedy.

The Departmental Process

The current discrimination complaint process provides that individuals who believe they have been discriminated against must contact an EEO counselor within thirty (30) days of the discriminatory act(s) or decision(s), or within thirty (30) days of becoming aware of the discriminatory act(s) or decision(s). The process provides that the counselor will hear the employee's complaint and perform appropriate inquiries to try to informally resolve the complaint. (While a 30-day filing time line is the current policy, it should be noted that legislation recently passed which would change the Government Code to allow a one-year filing deadline. See Appendix O.)

Within fifteen (15) days from the date of the first contact with the complainant, the counselor is supposed to provide the complainant with a written statement of the results of the inquiries and/or attempts to resolve the matter informally. The counselor must also advise the complainant at this time, of her right to file a formal complaint if the complainant is not satisfied or if the complaint is not resolved.

The complainant subsequently has fifteen (15) days to file the formal complaint with the department. Upon receipt of the formal complaint, the EEO manager has seven (7) days within which to assign the complaint for investigation. The investigation is to be completed within twenty (20) days of the date assigned. The EEO manager must subsequently provide the complainant and departmental management with a copy of the investigative report and recommendations relative to granting or denying the complaint, within seven (7) days of receiving the investigative report from the EEO investigator. Finally, the department's final decision must be rendered to the complainant within the next twenty (20) days.

Although current policy provides that complaints should be responded to within 50 to 60 days of the date of formal filing, departments are not considered in violation of civil service laws and rules, unless they fail to respond within 180 days as required by statute. Keep in mind that your department's discrimination complaint process as explained on paper may lead you to believe that it will be handled in a short period of time, when in fact, the only time frame enforced is the 180 days. Be sure to consider this fact before opting to use the internal state process.

Within the departmental process all employees should be assured of the following rights with regard to complaints of discrimination:

- The right to an informal, confidential presentation of the complaint to a competent counselor using a reasonable amount of state time;
- The right to a full, impartial and prompt investigation by a trained investigator;
- The right to keep the complaint confidential until such time as the counselor is given permission to disclose information in order to bring the complaint to the appropriate authority for remedy, or until such time as a formal complaint is filed;
- The right to all relevant information developed and discovered during the course of any investigation and inquiry into the matter;
- The right to a timely decision from the appoint-

ing power, or authority designated by the appointing power, after full consideration of all relevant facts and circumstances;

- The right to be represented by a person of the complainant's choosing during all steps of the process;
- The right to appeal the appointing power's decision to the SPB, or other appropriate state or federal control agency, or to file a civil action in the appropriate court; and,
- Freedom from influence to refrain from filing a complaint, and freedom from reprisal for filing a complaint.

Appeal to the Appeals Division of the State Personnel Board (SPB)

Discrimination cases come to the SPB in several forms. They can be discrimination complaints, merit issue complaints, exam appeals, group exam appeals, withhold from certification appeals, adverse action appeals, reasonable accommodation appeals, medical appeals or the above combined with a range of other types of appeals handled by SPB. The only types of complaints handled by the Discrimination Complaint Unit of the SPB Appeals Division are those that come in as solely a discrimination complaint or an EEOC complaint.

When a complaint is assigned to an analyst in the Discrimination Complaint Unit, a review is conducted to identify what further information is needed. In most cases, the complaint has already been through a departmental investigation and a report of departmental findings is available. Contact is made with the parties involved if additional information is needed. Once essential information is gathered, cases are either referred to a staff panel for a hearing or staff make a recommendation as to whether or not discrimination occurred and what the apropriate remedy should be. A report is prepared for the Executive Officer of the SPB for approval.

There are no requirements for contacting any of the parties involved, nor are there guidelines as to when it is necessary. One of the disadvantages of the appeal process is that you may find little adherence to a set procedure for investigating complaints. SPB investigators may or may not have had adequate training in investigation or employment discrimination law. You may find it necessary to "guide" them through the process, continually asserting your position.

Within thirty (30) days, the Executive Officer shall provide the complainant and the department with an analysis of the complaint and recommendation for resolution.

Upon receipt of the analysis and recommendations of the Executive Officer the department must notify the complainant by written memorandum, with a copy to the Personnel Board, of its intended action. This memorandum must be delivered to the complainant within ten (10) days of receipt of the memorandum from the Executive Officer, and must clearly specify the action to be taken and the time for completing the action.

If not satisfied with the recommendation of the Executive Officer of the SPB and/or the department's response, the complainant may file a formal appeal with the 5-member Personnel Board within thirty (30) days of the Executive Officer's recommendation or the department's response, whichever is later. The Board may refer the complaint to the Hearing Officer for further finding of fact, or may decide to hear the matter directly.

A dissatisfied party appealing to the Personnel Board itself may be required to make a request for rehearing which will only be considered if new or different facts are available. That appeal may be heard, generally in 30–60 days, at a regular meeting of the SPB. Evidence in the form of statements and documents may be received, but witnesses are not under oath and there is no cross-examination by the opposing party. In rare cases, the SPB may refer the complaint to its hearing office, in which case the procedure will be similar to an OAH hearing.

Sexual harassment as a hearing issue arises in two ways: (1) a state employee may file a complaint of sexual harassment, or (2) sexual harassment may be a defense against an adverse personnel action, such as when it is alleged that the adverse action was taken in retaliation for a refusal to submit to sexual harassment or for filing a complaint of sexual harassment.

Where sexual harassment arises as a defense to an adverse action taken against an employee (dismissal, suspension, demotion, letter of reprimand) who appeals the penalty, the appeal goes to the SPB hearing office. The employer appealing the adverse action will be responding to a letter or other notice of the conduct alleged to justify the adverse actions. The employer must prove the charges which resulted in adverse action. However, a probationary employee has the burden of proving that termination while on probation was the result of illegal discrimination. The hearing procedure will be similar to an OAH hearing. The employee is entitled to what is called a Skelly hearing to insure due process (see Gov. Code, § 19570 *et seq.*).

An employee facing an adverse action who feels that she has been sexually harassed and that the harassment is related to the adverse action, may raise that as a defense and may also file a complaint. That complaint would normally go to the SPB Appeals Division, if the department rejected the claim. However, if there is both a complaint and an adverse action, they will generally be joined and heard by an ALJ.

If the complainant is not satisified with the deci-

sion of the five-member Board, she may file an appeal with the appropriate state or federal agency or court having jurisdiction.

All references to time are intended as maximum elapsed calendar days, except that circumstances beyond the control of the person(s) responsible for an action will extend the time allowed for that particular action by an amount of time directly attributable to such circumstances.

Complainants may be represented at all times by a person of their choosing, and where the complainant is referred to, it is intended that the reference include the complainant's representative, if appropriate.

Relief (Remedy)

Current Appeals Division policy requires that a remedy be provided only upon a clear finding of discrimination. While this has been the policy, the Board has recently made an exception in order to address basic inequities where the parties involved agreed to a solution.

Effective January 1, 1985 through the passage of SB 2012 (Watson) (Chapter 1754, Statutes of 1984) the remedies available through the SPB were codified in Gov. Code § 19702 (e). SPB has authority to:

> . . . issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take such action, including, but not limited to hiring, reinstatement or upgrading of employees, with or without back pay, and compensatory damages, which, in the judgment of the board, will effectuate (sic) the purposes of this part. . . The order shall include a requirement of reporting the manner of compliance.

SAMPLE COMPLAINT FORMAT

(State Civil Service)

There is no standardized form available for filing a complaint of discrimination for state civil service employees. Some state agencies may have their own form and you should ask if one is available or required. Further, SPB requires no particular form for filing an appeal. The SPB merely requests that an appeal be in writing, be filed in a timely manner, that it identify the specific act or decision which is being appealed in sufficient detail to allow investigation or hearing by the Board or by Board Staff, and that it specify what remedy is being sought to resolve the appeal. The following format is recommended for complaint filing, either at the departmental or SPB appeal level.

I. Complainant Information
   - A. Name/Address/Phone
   - B. Department name and address
   - C. Position/Classification/Organizational location/Work phone
   - D. Time base
   - E. Employment Status

II. Name/Affiliation/Address/Phone, etc. of Complainant's Representative, if any

III. Complaint Information
   - A. Date applicant filed complaint
   - B. Dates of Incidents Causing Complaint/Date of Most Recent Incident
   - C. Date of Discussion/Disclosure to Supervisor/Management Staff/Names/, etc., if Any Occurred.
   - D. Allegations
   - E. Parties Involved
   - F. Summary of Complaint (Paragraph explanation and chronological summary table (Date/Event/Parties/Outcome/Location)
   - G. Background Complaint Information and Documentation
     1. Incident #1 Date + Details (who, what, where, when, how)
     2. Incident #2 etc.

IV. Specific Remedy(ies) Requested

V. Appendix containing other supporting documentation

State Board of Control

Overview

In order to file a lawsuit against the State of California, as your employer, a claim must first be filed with the State Board of Control at its primary office located at 770 L Street, Suite 700, P.O. Box 3036, Sacramento, CA 95812. A claim must be presented to the State Board of Control before a lawsuit can be initiated against a public entity.

Tort Claims

A claim relating to a cause of action for death, injury to person or injury to personal property or growing crops must be presented *no later than the 100th day* after the accrual of the cause of action. This type of claim usually alleges negligent action on the part of the State or its employees. A form (BC 1/A) is available for this type of claim but is not required. According to Gov. Code § 910, a claim shall be presented by the claimant or by a person acting on his behalf and shall show:

1. The name and post office address of the claimant;
2. The post office address to which the person presenting the claim desires notices to be sent;
3. The date, place and other circumstances of the occurrence or transaction which gave rise to the claim;

4. A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim;
5. The names of the public employee or employees causing the injury, damage, or loss, if known; and
6. The amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of presentation of the claim, together with the basis of computation of the amount claimed.

The Board accepts the postmark date on an envelope in determining the date a claim is presented to the Board. (See Appendix for a sample BOC claim.)

Late Claims

If the 100 days have expired, your recourse is to file a written application for Leave to Present a Late Claim. The application should be presented within a reasonable time, not to exceed one year after the accrual of the cause of action, and should state the reason for the delay in presenting the claim. The proposed claim should be attached to the application. In computing the one-year period under this subdivision, the time during which the claimant was a minor shall be counted, but the time during which she was mentally incapacitated and did not have a guardian or a conservator of her person will not be counted (Cal. Gov. Code, §§ 911.4 and 911.6). Because the Board of Control does not furnish prepared forms for the late application, a statement in letter format is preferable.

Types of Claims

A claim form (BC 1/B) is also available for types of claims not discussed above. These other types of claims may include but are not limited to: claims alleging a contractual obligation; claims arising out of damage to real property; State employee claims; (such as an out-of-class claim); claims for a refund of fees, taxes, penalties, etc.; and, claims involving the Medi-Cal program. These claims must be presented within one year from the date of the accrual of the cause of action.

While forms for these claims are available, they are not required. A statement signed by the claimant which clearly explains the basis for the claim will be accepted. Any prior correspondence with other State agencies also should be included, together with estimates or a description of how the amount of the claim was computed.

Hearings

Hearings are held in Sacramento 13 times a year; Los Angeles, 6 times a year; San Francisco, 4 times a year; and San Diego, once a year. You may request a specific location for your hearing if you want to attend.

Due to statutory requirements the Board hears tort claims within 45 days. Therefore, your claim may be heard initially at a location other than the location you choose. The claim will then be re-calendared for another hearing at the location you initially requested.

It is helpful to have an attorney present at the hearing but the legal fees are the claimant's responsibility.

IF YOU HAVE ANY QUESTIONS, YOU MAY CONTACT BOARD OF CONTROL GOVERNMENT CLAIMS UNIT STAFF AT (916) 323-3564.

Local Human Rights Commissions

Overview

Another administrative avenue is the local human rights commission. Each local commission is an independent agency and develops its own policies and procedures. Check in the phone book for a commission which has jurisdiction over your situation.

The Human Rights/Fair Housing Commission of the City and County of Sacramento is an example of one agency handling discrimination complaints at the local level. This Commission, typical of human rights organizations throughout California, has no enforcement power on matters covered by the FEHA and is limited in how it can assist claimants. The Commission only has the power to:

> Inquire into incidents of discrimination . . . and take action by means of conciliation, conference, persuasion and public hearing to alleviate such practices . . .

This means that the Commission can help work out an agreement between you and your employer, but that compliance by either party is voluntary.

The Sacramento Human Rights Commission has jurisdiction within the City and County of Sacramento. It receives, investigates and attempts to resolve complaints from citizens in the areas of discrimination in employment, housing, and educational opportunity. The Commission acts as a mediator in resolving complaints. It has no authority to force an employer to alter its employment practices. If the employer does not voluntarily comply with the recommendation of the Commission and the complainant wants to proceed, further action must be sought through the DFEH, the EEOC or some other appropriate agency.

The Sacramento Human Rights Commission works closely with the DFEH and refers clients to that state agency when the case falls within DFEH authority and the claimant seeks further relief. The Sacramento Commission also maintains a referral list of attorneys who have previously handled discrimination cases, and refers clients when appropriate.

If you wish to file a complaint with your local Human Rights Commission, you must begin by filing a complaint form (see Appendix for a sample Human Rights Commission Complaint). The Commission then notifies the respondent (alleged harasser) of the filed complaint and request that respondent contact the Commission. Investigation then begins, including an interview of the claimant, contact with witnesses and a review of company policies. If the Commission staff finds reason to believe that discrimination has occurred, steps are taken to achieve a reconciliation satisfactory to both the claimant and the Human Rights Commission staff. Such steps may include meeting with the claimant to determine desired settlement, mediation between claimant and respondent, and finally arriving at an agreement for resolving the problem.

If the investigation of the Commission staff finds no basis for the complaint of discrimination, the claimant may appeal the case to the Director of the Commission. The Director reviews the case and makes a determination. If the claimant is still dissatisfied an appeal of the determination of the Director may be requested to the full Commission. This is as far as the Sacramento Human Rights Commission complaint can go. Cross-filing with the DFEH is recommended if further relief is desired.

If you live outside the county of Sacramento, contact either your city or county Commission on Human Rights to find out what procedures should be followed in your case.

Sample (New York) Human Rights Commission Cases

Ms. S.B. vs Dr. M.S. Ms. S.B., an Office Manager and Nurse, was forced to quit her job due to intolerable sexual harassment by her employer, Dr. M.S. The complainant was subjected to continuous intolerable unwanted sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature which was extremely intimidating, hostile, and offensive.

Ms. S.B. docketed a complaint with the Human Rights Commission. The Commission found reasonable grounds to believe that unlawful sex discrimination in employment had occurred to Ms. S.B. by Dr. M.S. and that the doctrine of constructive discharge applies to Ms. S.B.'s situation. The doctrine states that "if the employer deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation, then the employer has encompassed a constructive discharge and is as liable for any illegal conduct involved therein as if it has formally discharged the aggrieved employee. . . " Ms. S.B. resigned to escape intolerable and unlawful harassment after her employer had, over a period of several months, imposed and attempted to impose, his professed sexual desires and amorous feelings upon her to create an objectionable and offensive environment which she could no longer endure.

P.W. vs Interstate Food Processing Corporation. Ms. P.W., an employee at a food processing plant, was discharged after filing a grievance protesting a warning she had received an hour after refusing her supervisor's request for a date. Ms. P.W. received a warning for sitting down an hour after refusing her supervisor's request for a date. When she filed a grievance stating ". . . while working down in raw production S.H. came and asked me to go out with him. I refused. Shortly after I received a warning for sitting down. I want to know why S. can do this and get away with it. . . " The company responded by discharging Ms. P.W. on the grounds that her accusation would substantially affect and impair the supervisor's ability to perform supervisory work. Further, the knowledge of the accusation among the company's employees can have a serious impact upon the performance and morale of the work force.

Ms. P.W. appealed to the State Human Rights Commission. The Commission found no evidence that Ms. P.W.'s allegation in the grievance was made in bad faith. Respondent's actions—warning and firing complainant for complaining of an unwanted sexual advance from a superior—would act as a serious deterrent to persons contemplating filing charges of sexual harassment. In essence, the individual would have to risk loss of job unless the allegations were conclusively demonstrated. The Commission found respondent's actions in violation of 5 M.R.S.A., sections 84553 and 84752 which read, in part, as follows: "unlawful discrimination includes . . . punishes or penalizing, or attempting to punish or penalize, any person for . . . complaining of a violation of this Act. . . "

B.T. vs Washington Square Restaurant. Ms. B.T., a waitress at a restaurant, was forced to quit her job because she was subjected to continued sexual harassment which prevented her from performing her duties. The complainant was often called vulgar names ("bitch," "wench," etc.), grabbed, and otherwise subjected to threatening treatment by a co-owner. An appeal to the State Human Rights Commission was made and a suit was filed in the State Superior Court. The Commission concluded that the complainant's charge was valid. The respondents were responsible for maintaining an atmosphere free from sexual harassment. The burden is not on the employees to object or complain about discriminating actions. Also, addressing sexually indecent comments to female employees is a form of sexual harassment and discrimination prohibited by Title VII of the Civil Rights Act of 1964.

Unemployment Insurance

Overview

The California Unemployment Insurance program is administered by the Employment Development Department (EDD). To be eligible for unemployment insurance, you must show that you quit for real, substantial, and compelling reasons, or that your discharge (if you were fired) was for reasons which did not injure, or tend to injure, your employer's best interests. After attempts to correct the offending situation have failed, quitting because of sexual harassment can be considered "good cause." (Since January 1, 1985 it is easier to argue that sexual harassment constitutes good cause for leaving a job; see newly added section 1256.7 of the Unemployment Insurance Code, Chapter 1058, Statutes of 1984 in Appendix.) Further, EDD has promulgated regulations to administer the Unemployment Insurance Code. These regulations include sections 1256-15(e) of Title 22 of the California Administrative Code which states:

> If a claimant reasonably believes that continued work will cause a reasonably foreseeable and substantially probable serious risk to his or her morals, the claimant's leaving of work for this reason is with good cause. There is a reasonably foreseeable and substantially probable serious risk to morals if the claimant is required to engage in immoral, dishonest, illegal or unethical acts, or to discriminate against minorities, *or is subjected to improper advances from co-workers or the employer.* Prior to leaving, the claimant must have objected to the employer or taken other reasonable steps to preserve the job. (This regulation preceded the above-mentioned change in the Unemployment Insurance Code.)

Process

If you have terminated your employment due to sexual harassment or were fired for your refusal to comply with the harasser's demands, you can file an unemployment insurance claim with the local EDD office. You should file your claim as soon as you are unemployed, usually not later than the week after termination. (See Appendix for a sample unemployment insurance claim.)

In your claim, you should state the reason for leaving as sexual harassment/sex discrimination. If you have voluntarily quit, the burden of proof is on you to establish that sexual harassment constituted your reason for quitting and that you had taken all reasonable means to alleviate the situation before quitting. "Reasonable means" does not include an attempt which is known in advance to be futile, nor does it include actions which would cause you to suffer additional harassment, sexual or otherwise, arising from your attempt to alleviate the problem. Documentation is important.

If you were fired, your employer must prove that s/he had a real, substantial and compelling reason for taking such action.

After you have filed your claim, you will be interviewed by EDD staff, at which time you should present your documentation and supporting data for the claim. Your employer will be given a copy of the claim and an opportunity to respond to the allegations.

If you are able to show "good cause" (as described above) for leaving your job, you will be eligible for unemployment insurance benefits, assuming you meet the other requirements of the Unemployment Insurance Code.

If you are denied benefits for any reason, you may file for further review through the Office of Appeals. This hearing provides you an opportunity to present your evidence to an administrative law judge. You must file your appeal within 20 days of the mailing date of EDD's initial notice of disqualification, or establish good cause for late filing. If the administrative law judge rules against you, you can appeal further to the California Unemployment Insurance Appeals Board (CUIAB). This appeal must be filed within 20 days of the mailing date of the administrative law judge's decision. This board does not generally allow new evidence; it simply reviews what has already been heard and then issues a written decision.

It should be noted that under California law (Unemployment Insurance Code section 1256.7) findings of fact and law by the Director regarding whether or not an employee left employment because of sexual harassment "shall not collaterally estop adjudication of the issue of sexual harassment in another forum." In other words, receipt or denial of an unemployment insurance claim based on underlying sexual harassment will not preempt the recovery of civil damages.

Benefits

If you are successful in your unemployment insurance claim, you will receive a weekly benefit based on the amount of wages paid in the highest quarter of your base period (a 12-month period determined by the beginning date of your claim.) For example, if you earned $2,900 during your highest earning quarter (say July–September), your weekly benefit would be $100. The maximum amount of unemployment insurance payable in a benefit year is 26 times your weekly benefit amount, or one-half the total base period earnings, whichever is less. A benefit year is the 52-week period which begins when your valid new claim begins. Unemployment benefits stop once you are again employed on a full-time basis. Reduced benefits may be payable if you are working less than full-time.

In order to receive unemployment insurance benefits you must: be unemployed or employed less than full-time, have incurred a separation through no fault of your own; have filed a timely claim; be physically able to work; be available to accept work, be actively seeking work; not have refused suitable work without good cause; and, meet all other eligibility requirements. Additionally, you must submit a claim card for each week in which you wish to claim benefits.

If you are unable to work due to sickness or injury caused by previous employment, you are eligible for Workers' Compensation benefits (see the following section on Workers' Compensation).

Workers' Compensation

Overview

The stress resulting from sexual harassment on the job may become disabling. You may be eligible for Workers' Compensation if you leave the job due to medical or psychological disorders caused by the discrimination. An increasing number of workers are winning compensation cases for mental and physical stress-related conditions resulting from sexual harassment. The basic rules to remember are:

1. A person unable to work due to injury or illness caused by their employment is eligible for Workers' Compensation through the employer's Workers' Compensation insurance plan. (State workers know it as "INDL".)
2. A person unable to work due to a non-job related injury (e.g., sexual harassment in housing accommodations) may apply for State Disability Insurance through EDD. (State workers know it as "NDI".)
3. A person able to work, but who quit or was fired from a job due to sexual harassment may apply for unemployment benefits from EDD (see above section).

In one Workers' Compensation case in 1975, the claimant alleged that she sustained psychological injuries as a result of her working relationship with her employer who was described as a "chronic tease." She perceived his comments and actions toward her as threatening and felt she was being persecuted. The pressure resulting from this conflict, along with a heavy workload in the office, caused the claimant to have a "psychotic break with reality" with symptoms such as numbness in one arm, dizziness and the inability to speak clearly. In this case, the Workers' Compensation judge held that she was entitled to an award of 82 percent of permanent disability.

Workers' Compensation benefits may be available to employees who suffer a *job-related* illness or injury, including stress-related disorders. Physical or emotional injuries resulting from sexual harassment in employment are treated like any other injury arising out of or occurring in the course of employment.

If you have suffered such an injury, you are entitled to temporary disability compensation payable during such periods as you are unable to work. You are entitled to all medical or psychiatric treatment as may be necessary to cure or relieve the effects of the injury. If an injury leaves permanent effects, you are entitled to permanent disability compensation.

The benefits you may receive as a result of a Workers' Compensation claim include: (1) medical care for the injury/illness; (2) monetary payment during the period of disability; (3) rehabilitation and training for another occupation (including schooling and ⅔ salary); and (4) a cash settlement for permanent disabilities.

Process

In filing a Workers' Compensation claim, you will be dealing with your employer or her/his insurance claim representative, because Workers' Compensation is an employer's insurance plan. The employer or the employer's insurance carrier usually will not voluntarily pay workers' compensation benefits. Hence, most Workers' Compensation claims are resolved through the court system. You may apply for State Disability Insurance benefits through EDD while the Workers' Compensation claim is being processed.

It is important to report your injury to your employer immediately, and the report should be made within one year from the onset of the injury/illness. However, there are a number of ways to get around the one-year limitation, so consult an attorney if you wish to file a claim and the year has lapsed. Once you report the illness/injury to your employer, s/he should make arrangements for treatment. If, however, your employer refuses to do so (try to get the refusal in writing), you can use your private medical insurance if you have some.

You should seek immediate treatment from a physician. The physician should be advised of the facts surrounding the stress or harassment. If you are unable to continue to work, you should immediately apply for Workers' Compensation. Have your doctor certify that you are disabled and make sure that the form indicates that you are claiming a work-related illness or injury. (See Appendix for a sample Worker's Compensation claim.)

It is advisable to immediately contact an attorney who specializes in Workers' Compensation claims. Most Workers' Compensation cases are taken on a *contingency basis*, so you will probably not have to pay the attorney a retainer, but will be able *to pay the attorney out of any award you receive*. Although the Labor Code specifically mandates a liberal interpretation of the laws providing compensation to injured workers, you still must "prove" your case with a preponderance of evidence (i.e., more than 50 per-

cent of the evidence in your favor). Without good legal assistance and medical documenation, it may be difficult to obtain Workers' Compensation benefits for the emotional and physical distress caused by sexual harassment. Further, your employer's Workers' Compensation insurance company will probably fight your claim and refuse to pay your doctor bills and monthly benefits. In that case, you must file an "Application for Adjudication" form with the Division of Industrial Accidents. It will then be heard by a Workers' Compensation judge at the local office and s/he will issue a decision. Although you can get advice from the local Division of Industrial Accidents and file it yourself, you should have an attorney represent you.

If any party is dissatisfied with the decision of the Workers' Compensation judge, s/he may appeal to the Workers' Compensation Appeals Board in San Francisco. The Board is considered a court of law and the Board's decision is appealable to a district Court of Appeal by seeking a Writ of Review.

Benefits

Often sexual harassment takes the form of intentional infliction of emotional distress, which is an intentional tort. The line of cases (commencing with *Renteria* v. *County of Orange*, 82 Cal.App.3d 833 (1978)) essentially holds that when an employer conducts himself in such a manner that is so outrageous as to take parties outside the parameters of the normal employer/employee relationship, the harassing employer can be held liable in civil court for damages caused as a result of her/his intentional infliction of emotional distress. In other words, the Workers' Compensation remedies and civil litigation remedies are not mutually exclusive, and remedies should be appropriately pursued in both the Workers' Compensation arena and through civil lawsuits. The payment of Workers' Compensation benefits is not considered a total remedy for work-related injuries in all cases. While Workers' Compensation does cover your medical treatment costs, etc., that coverage is on an immediate need basis in the form of temporary disability, which is a maintenance benefit, as well as prompt payment and provision of medical treatment to cure and relieve the effects of the injury.

It should be noted that the existence of a previously filed Workers' Compensation suit cannot preclude the successful pursuit of a tort claim, which is exempt from the exclusivity provisions of Workers' Compensation. However, receipt of a final award *may preempt* the recovery of civil damages. It *may* therefore be advisable to drop the Workers' Compensation claim before a final award can be made. Because of this possibility, you should consult with an attorney if you intend to pursue any action in addition to a Workers' Compensation claim.

In addition to these benefits, when your condition has stabilized and there is residual disability or decreased capacity to compete in the open labor market as a result of the industrial injury, you are compensated in accordance with your reduced capacity to compete in the open labor market in the form of a permanent disability award.

In a case such as intentional sexual harassment causing damage, there is also a penalty provision within the Workers' Compensation system which increases a permanent disability award by 50 percent if it is found that the employer is guilty of serious and willful misconduct which has caused injury. This benefit could be substantial, in that under the present disability benefit structure, a 20 percent injury is in and of itself worth almost $10,000.

There is a pamphlet regarding Workers' Compensation available free of charge from:

California Workers' Compensation Institute
315 Montgomery Street
San Francisco, CA 94104
415/981-2107

Arbitration as a Forum for a Sexual Harassment Claim

Overview

If an employee is covered by a collective bargaining agreement (union contract), the agreement may offer an avenue for resolving sexual harassment through the grievance procedure. The procedures, if any, should be contained in the collective bargaining agreement. Thus, pursuing a claim through a grievance abritration is different from any of the other possible administrative or legal systems. Your very first step in considering this procedure is to read and become familiar with the contract. Your next step is to contact your union steward or other union official. After you have done that, you will be in a position to make your first decision, which is whether you can or should file a grievance. We will discuss first the factors to consider in making that decision. Then we will cover procedures and expectations, to the extent that there are any generalizations possible.

The Collective Bargaining Agreement

A collective bargaining agreement is a contract between the employer and the union in which each agrees to do certain things. A grievance is filed by the union when it believes the employer has not lived up to what it agreed to do. Therefore, there generally must be some kind of clause in which the employer agreed not to discriminate in order for the contract to be used for redress. If there is no such provision, you may be able to look to it for help unless a provision can be implied such as an "implied covenant [promise]of good faith and fair dealing."

The provision may be a direct statement that the

employer will not discriminate based on sex (among other factors). Or it may be indirect, with the employer agreeing to abide by "the laws of the United States" or "the laws of the State" or even, more specifically, "Title VII of the Civil Rights Act."

Most union contracts have a provision that an employee will be disciplined only for "just cause" (or some similar wording). Discipline is usually suspension or discharge, and failure to respond favorably to sexual requests is not "just cause." Nor is it "just cause" to fire someone because he or she has complained about sexual harassment. If you think you are being fired because you refused sexual advances, for instance, or because you went to the manager with a complaint about sexual harassment, you can file a grievance under a "just cause" clause, even though there is no express anti-discrimination clause in the collective bargaining agreement.

Similarly, there may be other general clauses under which sexual harassment claims can be raised. For instance, the contract may say promotions will be a function of seniority and qualification. If the employer has skipped over you for promotion, and you believe it is not because of qualifications but relates to sexual harassment, you can use that clause to raise the sexual harassment issue in a grievance.

Some contracts exclude certain kinds of claims (like discrimination) from the grievance process. That would mean you could not file a grievance alleging violation of an anti-discrimination clause, though you might still be able to raise it under a general clause, like a "just cause" clause. Or, the grievance procedure may say a grievance cannot be raised on the basis of discrimination if it has been raised some other way first (for example, with the EEOC). Note, however, that it cannot work the other direction, as an employer and union cannot, by agreement, eliminate rights given you by statute. That is, the union contract cannot keep you from going to the EEOC, the DFEH, or to court, even if you have already filed a grievance. The most that could happen is that your grievance would be dismissed when you elected to go another route.

Process Overview

Most grievance procedures have an informal step whereby the grievance is presented to the immediate or first-line supervisor. If it is not resolved, it then must go through one or more additional steps, where a higher level manager decides whether the employee has a legitimate complaint. Finally, if that does not lead to some resolution, the grievance is presented to an arbitrator. That person is not an employee, but is someone who is hired jointly by the union and the employer to decide the case. The parties to the collective bargaining agreement may have agreed that the decision of the arbitrator is final and binding. Or, they may have agreed only that the arbitrator's decision is advisory, in which case the employer is not bound to do what the arbitrator recommends, even if he or she finds in your favor.

Factors in the Union's Decision to Proceed with a Grievance

Because a grievance is filed by the union, the individual employee is not the one who decides whether the grievance will be pursued. (An employee can always withdraw a grievance, but it cannot be pursued without union support.) Sometimes the contract will provide for the employee to initiate the grievance by talking to the immediate supervisor, either with or without the help of a union steward. Invariably, though, a union signature is required when the grievance "goes formal" (i.e., is put in writing). But even that does not guarantee that the union will pursue the matter through the entire procedure, including arbitration. At any stage, the union may decide either that the resolution offered by the employer is adequate and should be accepted or that the complaint is not strong enough to go to the next step. This is particularly true when the grievance reaches arbitration, which is expensive. The union usually pays half the costs of arbitration and many unions hire attorneys to present their cases to an arbitrator.

You should find out, therefore, whether the union will support your grievance. They may not be able to tell you at the outset, because they do not know how the employer will respond. But that does not necessarily mean you should not go ahead with a grievance. You can sometimes raise a complaint in other ways, or at a later time. Additionally, your union representative may be able to give you helpful feedback on your case. It is easy to get so engrossed in your own case that you cannot judge it objectively; feedback is important. Depending on the experience your union leaders have, and whether you have confidence in them, you may want to go ahead with a grievance even if they will not guarantee that they will follow through.

Remember, too, that the union has to consider its other members and its responsibility to them. If, for instance, it is another union member that has engaged in the sexual harassment, the union may have a conflict if it represents you, and if it already represents the alleged harasser. (The same representative can not objectively present two opposite sides in a dispute.) Or, if other employees have grievances on other matters, the union may not have enough money to take all the cases to arbitration.

Your union's experience is the best guide as to how long a grievance takes, as this varies widely. Sometimes, a grievance may reach arbitration six months after it is filed; however, it may also take two years or even more. One thing is sure: it will probably take considerably longer than the times shown in the collective bargaining agreement. However, as you con-

sider whether to file a grievance, remember that it is usually much faster than the other ways available to you of raising a sexual harassment claim.

Because a grievance is filed by the union, not the employee, the employee may not have much to say about the process. However, many unions allow much employee involvement, particularly if the employee will gather documents and talk to other employees and has documented her or his experience thoroughly (see section on documentation).

In any event, the employee will probably not have much input into the arbitration hearing itself, especially if an attorney is hired to represent the union. The attorney may appreciate help from the employee in preparing for the hearing, but the employee is not likely to have much input. He will, however, probably be one of the witnesses called to the stand.

Deciding Whether to File a Grievance

If your collective bargaining agreement has an explicit (expressly stated) or implicit (implied) antidiscrimination clause and does not exclude a discrimination complaint from the grievance process, and if you have good evidence to support your claim, and if a grievance is not precluded by law, and finally, if the union will support your grievance, it may be a good idea to file a grievance. It does not cost you anything except your union dues. Also, because grievances usually move faster than other kinds of complaints, you can get an arbitrator's decision and still perhaps file a lawsuit later. (Be sure to keep track of your time limits, however, for going to the EEOC or the DFEH, in particular.) The arbitrator's decision may be binding on the union and employer if they have agreed in the contract that it will be, but it is not binding on a judge. But you should be aware that the judge will consider what the arbitrator decided and, if it is persuasive, may come to the same conclusion as the arbitrator.

The Grievance Process

There is no one general time line for a grievance. If there is any at all in your situation, it is in the relevant collective bargaining agreement. If your union refuses to represent you or to provide private representation, you may file an unfair labor practice charge against the union.

The process is also contained in the specific union contract. Usually the last grievance step is arbitration, from which there is very rarely any appeal. However, as mentioned above, other avenues can sometimes be pursued simultaneously with the grievance, and the arbitrator's decision may be considered, even though it is not technically appealed.

The relief available at the early stages of a grievance (before arbitration) is anything that the union and employer agree on. The arbitrator, too, can order any relief deemed appropriate, unless the contract limits available relief. Generally speaking, however, arbitrators do not order punitive damages and follow a "make whole" theory (see remedies section).

There are no general rules about what to expect in a grievance. Your union can tell you what to expect based on its experience with your employer. If you go to arbitration, you can expect a hearing that is a little like an informal trial. There will be witnesses who are examined and cross-examined; there will be documents introduced into evidence; there may or may not be a court reporter present; and, both the union and the employer will make legal arguments, either orally or by written brief, or both. As mentioned above, the union will decide what to present of your case, based at least partly on the information you have provided.

An arbitrator is not bound by another arbitrator's decisions. An arbitrator must follow any limitations contained in the collective bargaining agreement or in the case as presented by the union and the employer. Consequently, other cases have little, if any, precedential value. However, if there have been other cases involving your employer and your union, they might be helpful as precedent.

Chapter VI

MILITARY SERVICE SYSTEM COMPLAINTS

"You're in the Army now."

Overview

Military service, military living and military working conditions are quite different from civilian work. Service in the armed forces causes a change of legal status.

In military service the life and career opportunities of the military person are controlled to a large extent by the persons in the "chain of command" above him or her. One's time, and most important, one's promotional chances are directly controlled by one's supervisor. The chance of promotion is directly linked to the annual personal performance or efficiency report completed by one's supervisor. It is impossible to overstate the importance of this report.

Leaving military service is equally a change in status, and cannot be done by the military person's decision alone. In other words, a person cannot quit or fail to show up for work, without a penalty or punishment that can be applied, the effects of which will follow the person all the rest of their life. For example, the term "AWOL" means "absent without leave," that is, the permission to be absent from one's place of duty. The term "desertion" is even stronger, and is applied after a considerable amount of time has elapsed during which a person has been "AWOL." The penalties for either offense are supposed to be applied according to the procedures spelled out in the *Uniform Code of Military Justice* and the personnel regulations of the armed services.

There is another difference from civilian life for women in the military services, which is important when considering sexual harassment in employment. That difference is related to several factors: (1) change in the role of military women from temporary help or auxiliaries to permanent members of the armed services; (2) opening of a greater range of military jobs to women; (3) inexperience of military men in dealing with women in a working environment; and (4) attitudes of military men toward women.

Historically, women have been restricted in their participation in military service, both in numbers and in positions they have held. At one time only two percent of the armed forces could be women. Some restrictions remain today, especially on combat aircraft and combat ships. However, within the past few years the restrictions on women have been lessened.

The opening of a wide variety of positions and branches of services to women has brought many military men in contact with women in a work environment for the first time in their lives. Women now constitute almost ten percent of the active duty forces and earn promotions in a somewhat greater proportion compared to their male peers.

Finally, some military men have considered women to be one, or a combination of, the following: possessions, targets, pursuers, or live-in administrative assistants and housekeepers. These attitudes are ingrained in the popular mystique of military service and are perpetuated by literature and the visual arts, including comic strips such as Beetle Bailey. These attitudes are reinforced by those who condone or encourage jokes about women's bodies, sexually oriented remarks, or displays of sexual pictures or objects in their working or living environments.

The Uniform Code of Military Justice

Persons on active duty with the military services are subject to a different set of legal rules than civilians. The *Uniform Code of Military Justice* and the regulations of the various services spell out conduct rules for persons on active duty. These rules also apply to reservists on active duty and to members of the National Guard when on federal service. Individuals enrolled as cadets in any of the four service academies are subject to the disciplinary codes of their academy and should become familiar with those regulations. Upon graduation and upon being commissioned as officers in their respective services, they are subject to the *Uniform Code of Military Justice*.

Eight examples of conduct that might constitute both sexual harassment and an offense under the *Uniform Code of Military Justice* are:

1) Threatening to influence adversely the career, salary or job of another in exchange for sexual favors—extortion, Article 127; assault, Article 128.
2) Offering rewards for sexual favors—bribery and graft, Article 134.
3) Making sexual comments and/or gestures—indecent, insulting or obscene language prejudicial to good order and discipline; provoking speech or gestures, Article 117; disrespect, Articles 89, 91.
4) Making sexual contact—assault consummated by a battery, Article 128; indecent assault, Article 134; rape, Article 120.
5) Engaging in sexual harassment to the detriment of job performance—dereliction of duty, Article 92.
6) If the harasser is an officer—conduct unbecoming an officer, Article 133.
7) Being cruel to or maltreating any person sub-

ject to his or her orders—cruelty and maltreatment, Article 93.

8) Using his or her official position to gain sexual favors or advantages—failure to obey a lawful general order, Article 92.

The Role of the Defense Advisory Committee on Women in the Services

The Defense Advisory Committee on Women In The Services (DACOWITS) was created as an advisory body to the Secretary of Defense. On their periodic base visits, DACOWITS members make inquiries of both women and men about incidents of sexual harassment that they may have witnessed or in which they were the harassed person. DACOWITS members look for trends; they do not investigate individual cases.

Process

If you are experiencing sexual harassment and are in the military services, you can take action by talking to your supervisor and then using the chain of command if necessary.

In the military services, it is important to know your chain of command and the rules prohibiting sexual harassment. If the suspected harassment is coming from a person in the chain of command above you, particularly if it is your immediate supervisor, you should know who to talk to and where to go with a complaint. If you are new in the military service, you should be aware that a safe place is usually the chaplain's office, where there is little likelihood of a backlash against you. If you are assigned to a location where there is no chaplain, you can write to your family or to your member of Congress and let them know your suspicions; that puts your suspicions and your actions to counter harassment on record.

In the military services, the place to go and the people to see are spelled out in the regulations of your service and in your commanding officer's policy statements. In addition, you should have been provided a training session on preventing or countering sexual harassment. All military services have begun a process of training their military and civilian personnel. While genderisms may still abound, sexual harassment is now militarily unacceptable. No woman or man has to put up with it.

One common element in countering sexual harassment in all of the training programs devised by the military services is the necessity of telling the harasser that the behavior is unwanted and unacceptable. This is difficult to do. One way is to tell the harasser how the harassment makes you feel. Be aware that your reaction may hurt the ego of the harasser and that he may try to get back at you. Tell your supervisor what happened and how you dealt with the suspected harassment. Under some conditions it may be best to tell the supervisor when there are trustworthy witnesses around.

Each military service has assigned the responsibility for dealing with sexual harassment to a particular office or person on every installation, including ships at sea. Typically, this responsibility is placed in the personnel office, or the "Social Actions," or "Equal Opportunity" office. In addition, the services have added "preventing sexual harassment" or "maintaining a climate free from sexual harassment" to the list of items which a visiting team of inspectors looks at during an official base visit.

The services encourage persons who believe they are being harassed to seek help early, rather than waiting until the harassment becomes intolerable. Like other personnel matters, complaints of suspected harassment and investigations of complaints are supposed to be kept confidential.

In the military services, one solution to sexual harassment is blunt talk. The harasser may think you are encouraging him and just "leading him on." Call him by grade, as well as by surname. This method of address will call his attention to the fact that he is a military person, and so are you. If he does not stop, do not argue. Report him and his behavior, including the steps you took to counter the harassment. Above all, use the blunt talk early; never smile or treat the harassment as a joke.

Another solution is to find out from your friends if the harasser is known to have harassed other persons. If so, get together with these persons and confront him as a group. Let him know that all of you want the harassment to stop.

If your supervisor is the harasser, you can go up the chain of command one step at a time. If you are located in an isolated installation, you can go up the chain of command by telephone or letter.

Another alternative is to seek help from your legislator. As citizens, members of the military services can get in touch with their Congressional representatives if the military system appears to have failed to carry out its responsibilities for dealing with complaints of sexual harassment. Of course, you should try to exhaust the remedies at your base before you write to your elected representative. But your family can write or call your or their Congressional representative to let him or her know that sexual harassment is still going on in the military services. And when your complaint is dealt with fairly and swiftly, and there are no recurrances, your family can let the Congress member know that the services are doing their job of eliminating harassment.

Remedy

The only remedy available at this time in the military services is stopping the sexual harassment you are experiencing. In addition to this, it is hoped that the conditions that led to the sexual harassment can ultimately be eliminated.

Chapter VII

USING THE ADMINISTRATIVE/LEGAL SYSTEM IN EDUCATION

Federal Title IX and the Office for Civil Rights

Overview

Title IX of the Education Amendments of 1972 is a federal law prohibiting sex discrimination (including sexual harassment) in educational institutions that receive federal financial assistance. Sexual harassment is a form of sex discrimination in violation of Title IX. (*Alexander* v. *Yale University*, 459 F. Supp.1 (D. Conn. 1977); affirmed 631 F.2d 178 (D.C. Cir. 1980).

The law specifies that educational institutions must show proof of compliance with Title IX regulations in those programs or activities receiving federal financial assistance. An institution found to be in violation of Title IX is first given the chance to voluntarily comply. Failing this, all federal assistance to the program in violation *may be* discontinued. The Office for Civil Rights (OCR) of the United States Department of Education is responsible for investigating compliance with Title IX. Additionally, OCR has developed a procedure whereby students and employees may file a complaint directly with OCR. Addresses of the ten regional offices of the OCR are included at the end of this section.

Under Title IX, single individuals, a group or class of individuals, a representative for a group or class of individuals, and/or an organization on behalf of an aggrieved party may file complaints. Complaints may relate to one single incident or a pattern of such incidents. If you are a student or an employee at an institution that receives federal assistance and you feel that you have been subjected to sexual harassment, you have three options under Title IX (check other sections of the manual for other options):

1) Use internal grievance procedures adopted by your educational institution;
2) File a complaint directly with the Federal Office of Civil Rights;
3) File a lawsuit alleging sexual harassment in violation of Title IX. Because compensation under Title IX is often limited, you should file the lawsuit stating other causes of action such as tort claims, where the possible remedies are greater.

You may use any or all of the above procedures. You are not required to use or exhaust the internal grievance procedure before filing a complaint with OCR.

Your educational institution may adopt its own deadlines for filing a complaint. To determine what the specific deadlines are, you should contact the employee at your school responsible for coordinating Title IX (every institution is required by law to employ at least one person for this function). The deadline for filing with OCR is 180 days after the alleged incident, or within 60 days of the final step in the grievance procedure. The OCR Regional Director may waive the 180-day filing requirement for "good cause."

Title IX and Sexual Harassment

On August 31, 1981, the U.S. Department of Education issued a memo to all Regional Civil Rights Directors covering "Title IX and Sexual Harassment Complaints." The memo included the following definition of sexual harassment:

> Sexual harassment consists of verbal or physical conduct of a sexual nature, imposed on the basis of sex, by an employee or agent of a recipient that denies, limits, provides different, or conditions the provision of aid, benefits, services or treatment protected under Title IX.

Although the memo just addresses student services, Title IX also protects against sexual harassment in employment.

The memo also outlined investigation guidelines. In addition to guidelines for investigating cases, three criteria were included for determining whether an institution has fulfilled procedural requirements. These are:

1) Are there established and published grievance procedures that encompass comlaints of sexual harassment? These may be part of or separate from the overall Title IX and/or other discrimination complaint procedures. In addition, student and employee procedures may be separate. The Title IX coordinator should be able to provide this information. There may be several sets of procedures.
2) Do the procedures provide for prompt and equitable resolution of complaints of sexual harassment?
3) Were these procedures available to and used by the complainant? (Note: a complainant is not required to use the grievance procedure.)

In referring to the EEOC guidelines on work place sexual harassment, the memo on sexual harassment and Title IX points to the importance of preventive measures adopted by institutions.

Process

Every educational institution that receives federal

assistance is required to adopt and make public its grievance procedures. At least one person must be appointed to coordinate compliance with Title IX and to handle discrimination complaints. All students and employees must be notified of the name, address and phone number of the appointed coordinator. If such procedures are not easily located by calling your school, you may try the Affirmative Action Office or women's resource center to find the number.

To file with OCR, fill out a complaint form (see Appendix for a sample OCR Discrimination Complaint) or send the information requested in a letter to OCR. The information should be sent to the regional office nearest you. OCR will only handle written, complete complaints. For a complaint to be complete it must:

- Identify the complainant by name and address;
- Generally identify or describe those injured by the alleged discrimination (names of the injured parties not required);
- Identify the affected institution or individual alleged to have discriminated;
- Provide sufficient detail to inform OCR what discrimination occurred and when it occurred to permit OCR to commence an investigation; and
- Include the signature of the complainant (not necessarily the victim).

After receiving a complete complaint (usually within 15 days), OCR will contact the educational institution, the complainant, and all witnesses to allow each to present evidence. If OCR's preliminary findings show evidence that no sexual harassment has occurred, the complainant will be notified and given a chance to respond. "Letters of finding" will be issued to the institution and the complainant when a final determination has been made. If no violation is found, the case will be closed.

If OCR determines that sexual harassment has occurred, it will first seek voluntary compliance with the institution through negotiations. While a federal court consent decree mandates that OCR shall consult with the complainant before and during negotiations, the complainant's agreement is not a necessary part of any settlement agreement between OCR and the institution. OCR and the educational institution usually reach a mutual agreement. If they do not, all federal financial assistance to the educational program *may* be terminated.

Relief Available

The relief available through the internal grievance procedure varies from institution to institution and from case to case. Depending on the specific case, a variety of agreements may be reached during negotiations. For students, a grade may be changed or a benefit denied such as a scholarship or assistantship may be awarded. For employees, back pay *may* be awarded to compensate for the discrimination experienced. In addition, in either case, the harasser may be disciplined. The OCR may also require that grievance procedures be improved or better publicized.

If voluntary compliance is not obtained, the OCR may go through administrative procedures to seek termination of federal financial assistance. In lieu of administrative proceedings, OCR may refer the case to the Department of Justice to seek enforcement in the courts.

There is no way of knowing what to expect if you decide to file a grievance with your educational institution. Some have very effective grievance procedures; others have complicated deadlines and an uninformed staff and may take a long time to reach a determination. Unfortunately, it is conceivable that your educational institution has no grievance procedure. If your educational institution has an inadequate or non-existent Title IX grievance system, this is a violation of Title IX and should be reported to OCR.

If you choose to file directly with OCR, you should be aware that due to their complexity, sexual harassment cases may take a long time to resolve. The remedy requested (e.g. a complicated tenure issue) will affect whether or not the case is resolved quickly. The investigation does have to begin, however, within 90 days of the complaint according to the *Adams Order*.

The institution's confidentiality may have to be forfeited in order for OCR to investigate the case. However, the confidentiality of class complainants can be protected and generally, OCR will protect the complainant from the press and public disclosure. Additionally, the termination of all federal financial assistance is an extreme measure, so is not likely to occur very often. (Note, there may have been precedent-setting court decisions or new policies adopted by OCR since this publication.)

To get a better sense of what to expect, read the next section on examples of actual cases. To get the most out of your educational institution or the OCR, make sure you understand fully what options are available to you, when you should file, when the hearing will be taking place, etc. Ask the name and position of *anyone* who gives you information and, if possible, get that information in writing. (See the section in this manual on documenting the experience, which should prove helpful in the event of a hearing.)

Examples of Federal Title IX Complaints

1) A Ph.D. candidate in an esoteric science field (heightened potential for harasser retaliation) was allegedly harassed by her advisor, who was chair of the department, and member of her doctoral committee.

She alleged that she was harassed for over two

years; the incidents of harassment included: sporadic incidents of a physical sexual nature; at a conference, the professor tried to get into her motel room; the professor grabbed her when they were alone; the harassment escalated to assaults and when she responded by crying, he called her emotionally unstable; lost academic opportunity including being excluded from a funded trip to a foreign conference (other graduate students were funded), and the professor's withdrawal of his attention to her work.

Resolution: (Based on a private settlement between complainant and the university) The institution found money for her continued study, which was not from the harasser's grant; reconstituted her doctoral committee; removed the harasser from department chairmanship, ordered the harasser to take a leave without pay, placed a letter of reprimand in the professor's file, required counseling for the professor; and OCR negotiated better grievance procedures for students, including publication of university policy against sexual harassment. A separate appointment was made for a coordinator to handle sexual harassment complaints. The increased publicity helped all parties become aware of the policies.

2) A female professional school student alleged verbal and physical harassment by male students and verbal harassment by male professors against all female students in the professional school; the female students generally confirmed her allegations. Campus grievance procedures were not used because the dean and faculty advised women students that there were no procedures.

Resolution: OCR negotiated a settlement which included a commitment to hold meetings and seminars in the professional school on sexual harassment and development and implementation of specific and equitable grievance procedures; further, the institution developed an improved security system for female students.

3) Complainant was a student who was the editor of a student newspaper. She alleged that she was harassed over a two-semester period by a faculty member who was her advisor. The harassment was both verbal and physical. The harasser retaliated when she complained about the harassment by dismissing her from the newspaper.

She was reinstated as the editor, and he was removed as her advisor after a meeting with the college president and members of the department. The President asked the two other department faculty members to join with the former advisor to assign her a grade. She filed a complaint with OCR alleging that the grade given was not deserved and was given in retaliation for her complaint about harassment. Also, the complainant requested that a formal reprimand go into the professor's personnel file, and that there be no disparaging comments in her file. OCR is presently waiting while campus grievance procedures are being utilized. The college has agreed to conduct a workshop on sexual harassment for faculty and administrators and to revise its sexual harassment policy and procedures.

The Current State of Federal Title IX

As a result of the U.S. Supreme Court decision in the Grove City College Title IX lawsuit, Title IX requirements are imposed on any institution receiving federal financial assistance, but those requirements are limited to the programs and activities receiving the assistance.

What this means is that the threat of termination of funds applies only to those programs within an institution that are found to be in violation of Title IX *and* that receive federal financial assistance. An educational institution need not fear termination of all federal funds to the institution. For all practical purposes, this decision severely weakens the antidiscrimination provision included in Title IX (as suggested by Justices Stevens, Brennan and Marshall in their dissenting opinions). Efforts are under way to alter this narrow interpretation through an amendment to Title IX.

Essentially, an institution is prohibited from discriminating on the basis of sex in a "program" that receives federal financial assistance, but is not prohibited by Federal Title IX from discriminating in other programs or activities operated by that institution which do not receive federal financial assistance.

Regional Offices for Civil Rights Locations (Note: California is in Region IX)

Address complaints to: Regional Director, U.S. Commission on Civil Rights.

Region I Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

55 Summer Street, 8th Floor
Boston, MA 02110

Region II New Jersey, New York, Puerto Rico, Virgin Islands

26 Federal Plaza, Room 1639
New York, NY 10007

Region III Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

2120 L Street, N.W., Room 510
Washington, D.C. 20037

Region IV Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Citizens Trust Bank Bldg., Room 362
75 Piedmont Avenue, N.E.
Atlanta, GA 30303

Region V Illinois, Indiana Michigan, Minnesota, Ohio, Wisconsin

230 South Dearborn Street, 32nd Floor
Chicago, IL 60604

Region VI Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Heritage Plaza
418 South Main
San Antonio, TX 78204

Region VII Iowa, Kansas, Missouri, Nebraska

Old Federal Office Bldg., Room 3103
911 Walnut Street
Kansas City, MO 64106

Region VIII Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Brooks Towers, Suite 2235
1020 Fifteenth Street
Denver, CO 80202

Region IX Arizona, California, Hawaii, Nevada, American Samoa, Guam, Trust Territory of the Pacific Islands, Wake Island

3660 Wilshire Blvd., Suite 810
Los Angeles, CA 90010

California Law: Non-discrimination in Education

Overview

With certain exceptions, California law prohibits discriminatory practices, including sexual harassment, in any academic, extra-curricular, research, occupational training or other educational program or activity conducted by an educational institution which receives or benefits from state financial assistance or enrolls students who receive state student financial aid.

General Guidelines

The California law prohibits:

Exclusion from participation in or denial of benefits of any academic, extracurricular, research, occupational training, or other program or activity;

Provision of different amounts or types of student financial aid or the application of different criteria to applicants;

Exclusion from participation in or denial of "equivalent" opportunity in athletic programs;

Discrimination among persons in employment practices and conditions; (including, but not limited to students and to nonstudents, academic and nonacademic personnel)

Application of any rule pertaining to parental, family or marital status of a person;

Exclusion from any program, activity or employment due to pregnancy or related conditions;

Sexual harassment (see next section for details);

Separate toilet facilities, locker rooms or living facilities are permitted, so long as comparable facilities are provided. School districts are to adopt instructional materials in accordance with the existing provisions under section 60040 of the California Education Code. The State Board of Education, the Board of Governors of the California Community Colleges and the Trustees of the California State University and Colleges system are to issue rules and regulations to implement the law. Participation by the University of California is at the discretion of the U.C. Regents.

California Education Code Sections 200 *et seq.* and Sexual Harassment

Under the State equivalent to Title IX, sexual harassment is a form of sex discrimination, in that such conduct constitutes differential treatment on the basis of sex. Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

Submission to the conduct is explicitly or implicitly a condition of an individual's employment, academic status, or progress;

Submission to, or rejection of, the conduct by the individual is used as a basis for employment or academic decisions affecting an individual;

The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment; and,

Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution. (Cal. Ed. Code, § 210 added by SB 2252 (Marks), Chapter 1371, Statutes of 1984.)

Exemptions

Exempted from the provisions of the law are:

Schools controlled by a religious organization when compliance would be contrary to the religious beliefs;

Schools whose primary purpose is training for the U.S. Military Services or Merchant Marine.

Membership policies of the Girl and Boy Scouts, the YMCA and the YWCA, Campfire Girls and other single-sex, tax-exempt "Youth service" orga-

nizations whose members are principally under age 19;

Activities relating to the American Legion's Boys State, Boys Nation, Girls State or Girls Nation conferences;

Father-son or mother-daughter activities, if the opportunities for "reasonable comparable" activities are offered to students of both sexes;

Scholarship or other aid awarded by colleges and universities to participants in single-sex pageants which reward the combination of personal appearance, poise and talent.

Compliance and Enforcement

A single-page assurance of compliance is required from educational institutions before they receive financial assistance from state agencies. Timely reports of a more extensive nature may be required by the appropriate agency.

The governing board of a school district has the responsibility for ensuring that programs and activities are free from discrimination. The handling of complaints must be in accordance with state law requirements. However, it is important to work with the school district if you have a complaint, since there are no *formal* means of enforcement at the state level like those under Federal Title IX. However, most schools, if not all, that are covered by State law are also covered by Federal Title IX. This generally gives you the option to pursue relief through either process.

Existing state law does require the following from school districts with respect to state mechanisms:

A self-assessment of current programs, policies and practices to determine compliance status and plans for remediation, as needed;

An established complaint procedure for students and employee;

An adopted board policy of non-discrimination and on-going notification to students, parents, employees, applicants, etc.; and

Designation of at least one employee to coordinate compliance efforts and publication of information describing how to contact the designee.

For further information, single copies of the state law, additional resources and assistance, please contact:

Director, Title IX Assistance Office
California State Department of Education
721 Capitol Mall
Sacramento, CA 95814

Chapter VIII

ACQUIRING A CIVIL INJUNCTION AGAINST HARASSMENT OCCURRING IN THE COMMUNITY (OR ANY CONTEXT)

CCP 527.6: The Civil Harassment Law

Overview

While there are many options for dealing with sexual harassment which occurs in work or in school, few remedies are available for sexual harassment "in the streets." Of course, if the incident involved a crime against you, such as attempted rape or sexual battery, you can proceed through the criminal justice system. Or, if a tort was committed against you, you can file a lawsuit in civil court to recover for the injury. These options, discussed more fully in other sections of this manual, generally are lengthy and expensive propositions. Alternatively, you may seek an "injunction" or a court order requiring the harasser to cease the harassing behavior regardless of where the harassment occurs.

Under a California law (Code of Civil Procedure section 527.6), effective January 1, 1979, a person who has suffered harassment, or a plaintiff, may obtain a court order against the person, or defendant, who has harassed her. Such court orders are called injunctions. Proceedings under this law are handled by completing and submitting Judicial Counsel Forms available from the Superior Court Clerk of your county. (See Appendix for a sample instruction and form for a Lawsuit Prohibiting Harassment.) By the filing of a petition a victim can obtain a temporary restraining order effective immediately and remaining in effect until a hearing can be held. If the victim proves the elements of harassment at the hearing the court will issue an injunction effective for a maximum period of three (3) years. Should it be necessary, the injunctive order can be renewed for up to an additional three (3) year period by filing a new petition within ninety (90) days prior to the expiration of the original injunction.

Both the temporary restraining order and the injunction are orders of the court intended to protect the victim from further harassing acts of the defendant. While these orders will more often than not include a general provision against alarming, annoying or harassing the plaintiff, prohibitions against specific types of conduct are also included. Some very common prohibitions are already set forth on the appropriate court forms. Each of these provisions may or may not be applicable in a particular case. If any of these prohibitions is necessary to protect the victim of harassment, a check is placed in the appropriate box. In most cases of harassment the listed conducts are not all-inclusive and additional prohibitions must be added. Care must be taken to request additional prohibitions that will limit the conduct of the defendant and further protect the plaintiff. If a victim has kept a diary of the events that have caused her to suffer emotional distress, it will be helpful in identifying the types of conduct that must cease.

Code of Civil Procedure section 527.6 may not be the remedy best suited to every victim of harassment. Relief under this law is limited to injunctive orders, an award of attorney fees and costs of litigation if the plaintiff is successful in her action; and only limited assistance by law enforcement agencies should the defendant violate the order. Other potential remedies afford the victim an opportunity to obtain monetary damages in addition to injunctive relief. Injunctive relief and monetary damages may be obtained by the filing of a civil complaint premised upon the common law theories of intentional infliction of emotional distress and/or invasion of privacy. These common law theories require the filing of a complaint in the Superior Court and usually entail lengthy and complicated proceedings necessitating representation by an attorney. The addition of section 527.6 to the Code of Civil Procedure was intended to afford a victim a quicker, less complicated procedure to obtain an injunctive order prohibiting the harassment. If monetary relief is *not* the objective of the victim, this simplified proceeding can be an effective remedy.

The elements required to successfully petition for an injunction against harassment are:

1) Defendant (harasser) has committed acts which seriously alarm, annoy, or harass plaintiff (you);
2) Plaintiff has actually suffered substantial emotional distress as a direct result of the defendant's conduct (the net result of the harassment);
3) Defendant's conduct would have caused a reasonable person to suffer substantial emotional distress; and
4) Defendant's course of conduct has been directed specifically against plaintiff and is knowing, willful, not constitutionally protected and without legitimate purpose.

Each of these elements is included in the Petition For Injunction Prohibiting Harassment. The form requires the plaintiff to insert more specific information pertaining to some of these elements. In preparing for the hearing, plaintiff must be prepared to submit evidence establishing each of these elements.

The existence of an injunction should stop the harassment. If it does continue after entry of a valid court order, the victim's recourse is to seek punishment or compliance through contempt proceedings. There are two types of contempt proceedings: civil contempt and criminal contempt. Civil contempt and criminal contempt differ in two major ways: (1) who brings the action and, (2) the potential punishments. Both types of contempt are premised upon the defendant's failure to comply with the order of the court. Each prohibited act by the defendant gives rise to a charge, or a count, of contempt. Each count is subject to punishment.

Civil contempt is an action for contempt of court brought by the victim or private counsel retained by the victim. If the defendant is found guilty of one or more counts of civil contempt, he will be punished for each such count by a fine of up to $500.00 and/or jail time of up to five days.

Criminal contempt is an action for contempt of court brought by the district attorney. If a defendant is found guilty of one or more counts of criminal contempt, he will be guilty of a misdemeanor for each such count, fined up to $500.00 and/or jailed for up to 6 months. Further, a person previously convicted one or more times of a violation of the order based on charges separately brought and tried may be imprisoned in the county jail for not more than one year (Penal Code, § 273.6).

Procedure

Forms for suing under the law and for opposing such suits have been prepared by the Judicial Council of California and are available for purchase from the County Clerk for the Superior Court located at the County Courthouse. Ask the Clerk for the civil harassment forms. The package will include an instruction sheet and single copies of five different forms, four of which must be prepared by the party seeking the injunction. You will need at least four copies of each form used—an original to file with the court, a copy for yourself, a copy for each defendant, and one to use as a worksheet. All except the worksheet have to be typed. (Sample completed forms are included in the Appendix.)

You have the right to file or defend the suit and to go to court with or without an attorney. You should seek the advice of an attorney, since any lawsuit may involve technical problems that cannot be explained in a printed form. Whether or not you have an attorney, the other party may have one. If you choose not to have an attorney you should study the instructions very carefully before filling out the forms.

The Petition for Injunction Prohibiting Harassment/Application for Temporary Restraining Order and Order to Show Cause

These forms are the basic documents you will file with the court to initiate the lawsuit for the TRO and Injunction. On the Petition you must specify the acts engaged in by the harasser which seriously alarm, annoy or harass you including the period or approximate date of the acts. The law does not define the terms "annoy," "alarm," or "harass" to avoid limiting the conduct which is actionable; emphasis is instead placed on the result the conduct has on you and the effect the conduct would have on a reasonable person. You must also give details of the emotional distress suffered by you as a direct result of the harasser's conduct. Indications of substantial emotional distress include inability to sleep, crying periods, nervousness, and, fear of going outside or to other places where the harasser may be.

If you are seeking a TRO which issues without a hearing you must verify the petition by completing parts 16 and 17 on the form in which you will declare under penalty of perjury that the facts stated are true and correct. Further, you must give details of how you will suffer great and irreparable injury before the Petition can be heard in court, which necessitates the court in granting the request for the TRO. You may want to attach additional pages to the Petition to explain all the facts. If you do, then place an "X" in the box alongside item no. 9 of the Petition form.

The court may also require that the harasser be given notice before the TRO will issue. You can establish that the harasser had notice by arranging for the harasser to be personally served with copies of the Petition and other papers as ordered by the court. Service may be made by a licensed process server, the sheriff's department, or any person over the age of 18 other than yourself. The person who serves the harasser must sign a *Proof of Service* form. You must file the original of the Proof of Service with the court.

The *Order to Show Cause* notifies the harasser of the date and time of the hearing for the Injunction Prohibiting Harassment. The TRO is included in this form. The terms of the Order (indicated above) are set forth in detail on this form and may be tailored to fit your specific situation in Part 3(h). It is required that the *Proof of Service* be completed and filed before the hearing date. The harasser must be served with a copy of the Order to Show Cause, the Petition for Injunction Prohibiting Harassment, a blank Response to Petition for Harassment, and the Instructions for Lawsuits to Prohibit Harassment.

If you cannot afford to pay the fee for filing the papers with the court ($41 as of June 1985) you may request that the court allow you to file *in forma pauperis* (without paying a fee).

After the harasser receives copies of the Petition and the Order to Show Cause, the *Response to the Petition for Injunction Prohibiting Harassment* may be completed, filed with the court and served on the

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victim at least 48 hours before the scheduled hearing date.

You must be present at the Hearing. If there are any witnesses to the harasser's conduct or your emotional distress they should also be there. The *Order After Hearing* form should be completed and presented to the judge for signing. After it is signed, you must file the Order with the Clerk and give the Clerk the names of any law enforcement agencies you wish to receive copies of the Order. The court may order you to deliver a copy of each TRO or Injunction or modification or termination thereof, granted by the court, to the law enforcement agencies within the court's discretion as you requested. If the harasser was not present in court during the hearing you must arrange for personal service of a copy of the Order on the harasser.

If you prevail (are granted the request for Injunction) you may be awarded court costs and attorney's fees, if any.

You cannot recover monetary damages under this law. You also cannot get an injunction to prevent you from getting fired since it is considered a personnel action. You also must renew the Injunction every three years in the same manner as you originally obtained it.

As with any other remedy you chose to pursue, it is critical that you keep accurate and detailed records of events, including the date, time, place, who was present, what was said and done, and any physical evidence (notes, letters, etc.).

This procedure is more expeditious (quicker and cheaper) than many other forms of relief. However, it may not prevent the harasser from continuing to annoy, alarm or harass you, because the harasser may disobey the court order. But recall that there is punishment for wilful disobedience. Further, law enforcement agencies have current information as to the existence and status of any court orders and can respond to your request for assistance.

Some Hints for Success With the TRO and Injunction

- Document all harassment acts *even after* obtaining a TRO or an injunction.
- Identify the who, what, where, when, how, and any witnesses, consequences or impact(s) on the victim, etc. This will assist in proving the case and will help secure enforcement of the TRO and/or injunction.
- Document the acts by filing a police report. Call the police if defendant (harasser) scares or bothers you, or is lurking outside your home. Every police report filed will further assist in the prosecution of criminal contempt charges against the harasser.
- Do not list your home phone number in the phone book. Do not leave your phone number posted on your phone equipment at your home.
- Phone numbers placed on police reports or other documents can be obtained by the defendant. Use a different number for contact by all public agencies.
- Be aware that voter registration records can be a source of information for the harasser (for example, your address).
- Be aware that your driver's license and car registration are public records which may be obtained through the Department of Motor Vehicles. These documents contain your address and other personal information.
- Travel with a friend. Find someone to escort you to and from your job or your classes, etc.

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Chapter IX

THE PRISON COMPLAINT SYSTEM

Overview

Women prisoners have many barriers to overcome to litigate successfully a sexual harassment charge. Women in general are often disbelieved when they level such charges and prisoner complaints are rarely taken seriously. In order to bring an end to abuses, the problem may be approached simultaneously on several fronts. Women prisoners may organize within the prison to approach the administration as cohesive units in order to bring about compliance. Organizers outside the prison may work actively on the prisoners' behalf to form liaisons between the prisoners and legal and social service agencies, and to inform the legislature and the community of the abuses in the prisons. Finally, individual and class action claims may be brought.

Unlike in most employment settings, in prison there are justifications for unwanted viewing and touching. These include searching for contraband and 24-hour surveillance; activities characteristic and necessary to the prison setting. However, if necessary, one may sue to insure that body searches of women in county jails are done only with female prison personnel present, and to insure that no unwarranted intrusion upon privacy or prison sexual harassment occur.

Administrative and Legal Actions

A prisoner can pursue several kinds of action to remedy sexual harassment in prison. These include administrative as well as federal and state court remedies, which will be discussed more fully below.

One effective form of legal action is a lawsuit in federal court based on 42 U.S.C. § 1983, also known as a "Section 1983" suit. Section 1983 states in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

In other words, the harassment actions must violate federal rights guaranteed by the U.S. Constitution or federal statutes regarding conditions or treatment in prison. Because a Section 1983 lawsuit is extremely complex it is desirable to obtain an attorney. The prisoner is advised to hire one or to request the court to appoint an attorney. However, a self-help manual is available from the National Lawyer's Guild Prison Committee. The manual, entitled "The Jailhouse Lawyer's Manual: How to Bring a Federal Suit Against Abuses in Prison," may be obtained by writing:

> Jailhouse Lawyers Manual Collective
> c/o National Lawyers Guild Prison Committee
> 558 Capp Street
> San Francisco, CA 94110

This manual contains sample forms and information concerning how, where and whom to sue.

An alternative to the Section 1983 action in federal court is the pursuit of a writ of habeas corpus in a state court. Traditionally the writ has been used to inquire into the legality of a person's imprisonment; however, the writ of habeas corpus may now be sought to obtain a declaration and enforcement of a prisoner's rights in confinement.

If a prisoner chooses to petition the court for a writ of habeas corpus, she should be aware of the requirement to first exhaust all administrative remedies. The State Bar of California has published a pamphlet entitled "Manual For Use of Habeas Corpus by California Prisoners." The pamphlet, which includes a discussion of all necessary steps for filing a petition, may be obtained by writing:

> Office of Legal Services
> State Bar of California
> 555 Franklin St.
> San Francisco, CA 94102

Obtaining a writ of habeas corpus is less complicated and faster than prevailing in a Section 1983 lawsuit. It is not necessary to obtain legal counsel. However, it appears that California municipal and superior court judges reject almost every petition filed by represented or unrepresented prisoners. The chances of success in a Section 1983 action probably are greater. Further, in a Section 1983 suit it is not necessary to exhaust administrative remedies.

Remedies

In a Section 1983 suit you may ask the court to: (1) define your rights and the prison officials' obligations (declaratory judgment); (2) order the officials to do or stop doing particular things (injunction); and (3) order the officials to pay you for the harm they did by violating your rights (money damages). The court can: order the abusive situation to stop, both during the suit (temporary restraining order, preliminary injunction) and after the suit (an affirmative order); declare what the rights of the prisoners

are, thereby forcing the prison to draw up administrative guidelines; and issue a protective order so that the prisoners who bring the suit are not retaliated against.

Money damages are not available in a habeas corpus action. Remedies are limited to declaratory and injunctive relief after administrative remedies have been exhausted.

If a prisoner has been raped, sodomized, or otherwise sexually abused, the district attorney's office in the county where the prison or jail is located should be contacted. In this situation, because prisoners may not be believed, it is often more effective to get support from friends or family and have them make the initial contact with the district attorney's office.

As mentioned earlier, the administrative remedy must be pursued to completion before petitioning the court for a writ of habeas corpus. This requirement is based on a policy that prisoner problems are best handled at the administrative level. Further, courts like to have the prison administration's response to the charges when reviewing the writ. Therefore, the prisoner should begin administrative proceedings at once, in order to be heard by the court as soon as possible. Only if an administrative remedy would be inadequate, or pursuit of the remedy would be futile or would result in irreparable injury, can the court accept the case before the exhaustion of administrative remedies.

Administrative remedies may be the most efficient way to deal with sexual harassment in prison. Each prison has a procedure for handling prisoner complaints and may have administrative guidelines outlining what a male guard can and cannot do to a female prisoner. For instance, at the California Institution for Women, where 40 percent of the guards are men, the guidelines state that a male correctional officer may not conduct skin searches, do transporting, conduct urinalyses or observe showers. According to California Department of Corrections policy, male guards are not allowed to strip search female prisoners or view them in the nude or while defecating or urinating except in an emergency; they can conduct pat down searches only if female guards are present. Additionally, California Penal Code section 3322 states that "All regularly employed assistants, officers and employees whose duties bring them in contact with the inmates of the institution shall be women as far as practicable" (Deering, 1982). (Some of the above policies have been challenged as violating male or female guards' rights to equal employment opportunities.) Prisoners at the California Institution for Women continue to complain through various prison newsletters that the above policies are being violated.

In California, the administrative complaint procedure is the same throughout the prison system. The prisoner must first fill out a Standard Form 602 documenting the complaint (see discussion of documentation below). This begins the process and ensures that an informal review at the institution level will be held. The prisoner who is not happy with the outcome of the informal hearing may appeal. An appeals coordinator from the institution will then conduct an investigation and do an evaluation after reviewing all of the facts. Again, if the prisoner is not satisfied with the evaluation, an appeal to the Department of Corrections may be made. At this point, a department representative may visit the institution and conduct an investigation or may simply review the file, make an assessment, and then notify the prisoner of the decision. If the prisoner is not satisfied with these results, court remedies may be sought.

Preparation For Action

Before commencing action, it is important to completely document the event(s) leading to the complaint. All of the suggestions for documentation in work environment sexual harassment complaints apply here. In addition, there are many obstacles, unique to prisoners, making documentation particularly important. It is critical that prisoners act in as united a way as possible. Prison life is filled with problems that effectively serve to divide prisoners, including racism, homophobia, rumors, lack of feminist literature, prohibitions against touching between women prisoners and forced transfers. Prisoners must be aware of these and form networks within the prison.

In Oregon, for example, women prisoners themselves provided support to one another. Before filing suit over invasion of privacy, they documented the activities of two male sergeants. When a male sergeant would come into their living quarters in the middle of the night, one prisoner would write down the event and then have other prisoner witnesses sign and date it. When a sergeant walked into a cell and shoved one of the prisoners around, other prisoners would stand nearby witnessing the event and then record it. Over time, they acquired excellent documentation to support their claim. But the greatest benefit was a sense of unity which posed the real concern to the authorities; the prisoners had regained some semblance of personal power; they had learned their rights and began to assert them.

Documentation and unity alone may force the prison administration to take action to remedy a sexual harassment situation, while a complaint from one prisoner about one incident can more easily be dismissed by calling the woman a troublemaker or transferring her to another institution. Twelve or twenty or fifty incidents documented by a number of women are harder to dismiss. While it is hard for prisoners to take risks because of the possibility of their sentences being extended or their time being made more difficult, there is some safety in numbers.

It is therefore critical to get support—document everything—and keep the documents in safe hands. If a prisoner can get carbon paper, it is best to make carbon copies of all documentation, and to keep the carbons and the originals in separate places.

How To Get a Lawyer

Recall that to file a Section 1983 action, or petition the state court for a writ of habeas corpus, you do not need a lawyer. You may file "in pro per" or "pro se." Both phrases mean that you are representing yourself; you have the right to do this. Often prisoners, especially women at the California Institution for Women, where no legal services are available, find that filing "in pro per" or "pro se" is the only way that they can bring the action to court. The Supreme Court has mandated access to the courts, but lower courts are interpreting this mandate narrowly. Therefore, depending on the legal materials available within the prison, filing "in pro per" may or may not be possible. If you file without an attorney, by all means order the *Jailhouse Lawyer's Manual* and the *Manual for Use of Habeas Corpus by California Prisoners* (addresses indicated above). While the procedures for filing may be very complex they are not impossible. You *can* successfully file.

There are four ways that you may be able to retain a lawyer:

1) If you have a good chance of winning a substantial amount of money, a lawyer might take your case on a "contingency fee" basis. This means that you will pay the lawyer a certain percentage of what you win—but the lawyer will get nothing if you lose.
2) If you do not expect to win money from your suit, the government may pay the attorney's fees—if you win a major portion of your suit. The Supreme Court has ruled that under 42 U.S.C. § 1988, a person who brings and wins a Section 1983 suit should ordinarily be awarded attorney fees in all but very special circumstances. The lawyer may even be able to get fees if the case settles before it goes to court.
3) If you still cannot find a lawyer, you may request that the judge appoint one. While the judge has the power to appoint a lawyer, that power is discretionary—s/he does not have to appoint one. Usually the court will not order payment for the attorney it appoints.
4) Sometimes none of the above will work because you have not been able to contact the "right" attorney—i.e., an attorney who is sympathetic to, and understanding of, the plight of women in prison, especially with regard to sexual harassment. In this situation, the following sources may provide leads:
   a) The Jailhouse Manual has a list of resources on pp. 48–51.
   b) Often men's prisons have fairly sophisticated "jailhouse lawyers" who will be willing to write a complaint for women prisoners. In Oregon, where the men's and women's prisons are geographically close, this has occurred. In California, San Quentin is the only prison that has a Prison Law Office that may be able to help you find an attorney—or steer you in the right direction.

      Write: Prison Law Office
      General Delivery
      Freedom Mall, Main Street
      San Quentin, CA 94964
      415-457-9144

   c) Women may try to seek assistance from various public interest legal service agencies, such as the American Civil Liberties Union (ACLU), the National Lawyers Guild, or public interest law firms. The ACLU has a prison project that operates out of Washington, D.C., which engages in broad impact litigation and class action suits. The ACLU may be particularly interested in a constitutional question involving the right to privacy of women prisoners with regard to sexual harassment. Contact your local ACLU office.
   d) Some legal services offices work with prison and jail inmates. However, legal services has been severely restricted by the current federal administration. Contacting the local legal aid office may, however, be beneficial.
   e) Local community groups may help in locating legal assistance for abused prisoners. These groups include, among others, ex-offender groups such as People for Prison Alternatives, YMCAs, and groups providing support to prostitutes, runaways and others who may end up in prison; rape crisis centers and domestic violence shelters; women's law school groups; the National Organization for Women task force on Women in Prison, and women's resource hotlines in large cities and university towns. The resource hotlines are of particular importance to women who are jailed in large cities, often under oppressive conditions.

How to Generate Support for Your Cause of Action —Political Activism on the Outside

Community and political organizing outside the prison is important for a number of reasons. Most particularly, the more active the community's role in the administering of a prison, the less chance that abuses will go undetected. Further, the prisoners may feel more powerful if there are outside support groups.

While pressure and publicity need to be generated, this is hard for women in prison, who are extremely isolated. Friends and family can provide vital contacts with the outside; they can contact legislators, the media and the governor. They can generate petitions, organize with other groups, distribute flyers, etc. When generating this type of publicity, it is important to have more than an abstract issue; the response will be much more powerful if the publicity presents an individual case (e.g. Joann Little) or a number of cases focusing on certain outrageous practices or on the behavior of a particular guard(s).

Political activism is also important in seeking legislative changes. One reason administrative remedies are often ineffective is that they are difficult to enforce. Legislative efforts may be a far more potent solution. If the support of the legislature is gathered and laws are passed mandating specific behavior in prisons, the chance that a cause of action pursuant to sexual harassment laws would be upheld in court is far greater than if an administrative rule were being enforced.

It is therefore important for legislators to be educated concerning the abuse of women in prison and potential legislative solutions. Legislators can introduce legislation and oversee prison administration in a way the ordinary citizen cannot. They can also serve as a voice for the abused prisoners—generating publicity and pressure in a way impossible for the prisoners.

Legislators and lobbying groups can also seek greater access to the courts for women prisoners. For instance, some states, like Oregon, have a prison ombudsperson. An ombudsperson is an impartial person, paid neither by the Department of Corrections nor by a pro-prisoner group. The ombudsperson is responsible for investigating prisoner complaints and making recommendations to the administration, and is ultimately responsible to the governor. A sympathetic ombudsperson may prove invaluable to the prisoner.

Communication channels between prisoners and the outside world must be established. Women's groups must begin to take an active interest in the treatment of prisoners because prisoners are restricted in their ability to make statements and to act, and often are not believed. Thus, outside groups have a special responsibility to voice prisoner concerns and to educate prisoners and encourage them to be more assertive in demanding their rights.

Another possible means of political involvement combining the above two elements of political activism and communication with the outside, is to form an oversight committee composed of concerned laypeople in the community. If given authority, this committee could hear harassment complaints and take appropriate action. The committee could be responsible to the governor or a state agency. The active involvement of women on such a committee would insure responsiveness to women's issues. Such a committee will only be successful if prisoners take action and document the abuses and any unresponsiveness to complaints by the prison administration.

Legal Theories Upon Which to Base Your Cause of Action

Right to Privacy Under the Federal Constitution

While the Supreme Court has not yet formulated a concept of a right to bodily privacy for women prisoners, such a concept is possibly developing in the federal circuits. The Supreme Court has repeatedly held that prisons are not beyond the reach of the Constitution (*Wolff* v. *McDonnell* (1974) 418 U.S. 539). However, it held that strip searches of inmates in a federal custodial facility designed primarily to house pre-trial detainees were not unreasonable searches in violation of the Fourth Amendment because of the compelling need to protect against the smuggling of contraband into the institution. (*Bell* v. *Wolfish* (1978) 441 U.S. 520.)

The Supreme Court also recently noted that the curtailment of certain rights is necessary as a practical matter to accommodate a myriad of institutional needs and objectives of prison facilities, chief among which is internal security. (*Hudson* v. *Palmer* (1984) 104 S. Ct. 3194.) In the *Hudson* case, the court held as follows:

> . . . we hold that society is not prepared to recognize as legitimate any subjective expectation of privacy that a prisoner might have in his prison cell and that, accordingly, the Fourth Amendment proscription against unreasonable searches does not apply within the confines of the prison cell. The recognition of privacy rights for prisoners in their individual cells simply cannot be reconciled with the concept of incarceration and the needs and objectives of penal institutions. (p. 3200)

Although this case dealt with the search and seizure of a prisoner's property in his cell, not a search of his person, the opinion indicates that the U.S. Supreme Court gives little weight to the privacy interests of prisoners when balanced against the security interests of the penal institution.

One Oregon court has found that routinely allowing body searches of male prisoners by female prison guards violated their state constitutional rights although it recognized that such searches might sometimes be necessary. (*Sterling* v. *Cupp* (1981) 625 P. 2d 123.) However, in *Grummett* v. *Rushen* 779 F.2d 491 (1985) the Court of Appeal concluded that prisoners' expectations of privacy and their exposure to searches was not enlarged according to the sex of the person searching.

In the case of *Forts* v. *Ward,* a federal court has

found that women prisoners have a right to privacy —to be free from the unwanted gaze of male guards —but struggled with the boundaries of that protection. In *Forts*, women inmates at New York's Bedford Hills Correctional Facility sued for injunctive relief and damages under 42 U.S.C. §1983, for redress of the deprivation of their right of privacy under the First, Ninth and Fourteenth Amendments, caused by the posting of male guards in various places in the prison, including the housing units. The inmates charged that they were severely humiliated and deprived of their dignity because male guards were regularly permitted to view them naked while in the shower and while using toilet facilities.

The court found that such actions did violate the prisoners' right to privacy and balanced that constitutional right against the Title VII rights of male guards to be free from employment discrimination because of their sex. Suits have been brought by women prisoners against male guards, by female guards striving for equal employment opportunities and by male prisoners against female guards. As in *Grummett* v. *Rushen,* 779 F.2d 491 (1985) courts seem more likely to find that the male guard has a greater right to equal employment than the prisoner has a right to privacy. In the *Forts* case, for example, the trial court ordered an injunction against the assignment of male guards to night duty, to the infirmary, to the showers, and to first rounds in the morning. That ruling was later modified to allow nighttime shift work. The court said, "We seriously doubt that the inmates' interest in style or even in avoiding the occasional discomfort of warmth from a sleeping garment are of sufficient gravity to justify a denial of equal employment opportunities" (for the male guards). The prisoners objected to nighttime guard duty by male guards because they did not like the idea of men observing them while they slept, since they could not be sure that they were fully covered while sleeping.

In litigating a right to privacy claim, the following can be stressed:

1) Virtually all societies have rules for concealing private body parts and women in particular have a social and emotional need for bodily privacy;
2) The need for privacy is emotional and social and when invaded, the prisoner's sense of dignity is violated;
3) Involuntary exposure takes on greater significance in our society when a woman's body is viewed as a sexual object and a commodity, and when pornography and violence against women are acceptable; and
4) Some state and federal courts have held that if guards are in a position to watch inmates of the opposite sex who are engaged in personal private activities, such as undressing, using toilet facilities, showering, or talking to medical personnel, the inmates' constitutional rights have been violated; although other state and federal courts, including the Ninth Circuit in *Rushen,* have held to the contrary;
5) The justification for such an invasion of privacy should be that the security interests at the jail or prison necessitate it; usually equal employment rights of guards can be provided while still preserving inmate privacy. See discussion of inadequate justification below.

Freedom From Assault

Prisoners have a constitutional right to be reasonably protected from the constant threat of violence and sexual assault. Indeed, if assault has occurred, prisoners have the right to bring an action under Section 1983 for such abuse. They may also bring criminal charges for rape and sexual abuse, as well as appropriate tort claims.

Courts have indicated that a body cavity or genital search by a member of the opposite sex can be a violation of the inmate's right to privacy. The elements balanced in order to determine whether a violation has occurred are the reasonableness of the search weighed against the public interest in conducting the search. The only case that involved a female prisoner held that it was an unreasonable invasion of her privacy to be stripped and searched in the presence of male guards. The courts have limited this finding in cases involving female guards and male prisoners by stating that such searches were reasonable so long as the genitals (and breasts) were not touched. The litigator must use the arguments offered in the previous section on unnecessary viewing and argue that this limited protection is not sufficient.

Freedom From Sexual Exploitation

While a prisoner may have tort causes of action, such as the intentional infliction of emotional distress or assault and battery, there are also constitutional rights that must be asserted. Sexual relationships between inmates and guards are the product of sexual exploitation and cannot be defined as voluntary. Often a prisoner will maintain a sexual relationship with a guard because she has been threatened with some form of further punishment if she does not cooperate.

The litigator may pursue two different theories in cases alleging sexual exploitation. First, of all, since in any sexual relationship between a female inmate and a male guard there is the risk of pregnancy, the choice of whether or not to participate in that relationship should be protected by *Roe* v. *Wade* (1972) 410 U.S. 113 (holding that Due Process Clause of the Fourteenth Amendment protects the right of privacy against state action, including a woman's quali-

fied right to terminate her pregnancy). Indeed, the right to privacy as set forth in *Roe* and its progeny encompasses the freedom to make certain decisions. Any choice involving autonomy and dignity in the decision-making related to procreation must necessarily be recognized in the Fourteenth Amendment notion of liberty.

Second, if the patterns of exploitation rise to the level of a violation of the Eighth Amendment (which prohibits cruel and unusual punishment), the prisoner's right to be free from sexual exploitation has been denied. This right is included within the "penumbra" of the Constitution and should, therefore, be included within the protected zone of privacy articulated in *Griswold* v. *Connecticut* (1965) 381 U.S. 419 (which held that a statute forbidding the use of contraceptives violated the right of marital privacy, a right within the penumbra of the specific guarantees of the Bill of Rights). Thus, under *Roe* and *Griswold*, the prisoner would have a right to privacy which includes freedom from forced sexual relationships.

Inadequate State Justification

Prisoners face unwanted surveillance and touching by prison personnel for the purpose of detecting contraband and for institutional security, and such activity, if unwarranted, may constitute sexual harassment. Sexual harassment is distinguished from desired, mutual sexual activity by the fact that the recipient views the attention as unwanted. It is crucial that formal boundaries be established and followed.

Since the right to privacy is fundamental, it may be infringed upon only if the government shows a compelling state interest. Because the power imbalance in the prisoner-guard relationship is so great, the government itself should eliminate sexual harassment in prison or assume responsibility for prisoner exploitation. The government's inaction in these cases is, therefore, as harmful as pointedly condoning the activity. Unless the government has a compelling interest, a prisoner's right to be free from sexual harassment in prison (implicit within the right of privacy) has been denied. Litigators may argue that except in emergency situations, it is an invasion of the woman's right to privacy to allow male guards to view her in the nude or while defecating or urinating or to perform strip searches of her and that it would be less intrusive to employ a female guard for such duties or to provide curtains and other shields. These less intrusive procedures should therefore be used. There is no rehabilitative or institutional security interest other than an extreme bona fide emergency that is strong enough to infringe on the prisoner's right to dignity.

Finally, California courts have gone so far as to recognize the excuse of necessity as a defense to a prison escape (*People* v. *Lovercamp* (1974) 43 Cal. App. 3d 823, 118 Cal.Rptr. 110) where the following conditions exist, which includes an escape to avoid sexual assault or injury threatened by a sexual harasser:

(1) The prisoner is faced with a specific threat of death, forcible sexual attack or substantial bodily injury in the immediate future;
(2) There is no time for a complaint to the authorities or there exists a history of futile complaints which make any result from such complaints illusory;
(3) There is no time or opportunity to resort to the courts;
(4) There is no evidence of force or violence used towards prison personnel or other 'innocent' persons in the escape; and
(5) The prisoner immediately reports to the proper authorities when he has attained a position of safety from the immediate threat. (43 Cal.App. 3d 831.)

The *Lovercamp* defense is founded on public policy and provides a justification distinct from the elements required to prove escape. A trial court must instruct a jury in this situation that a defendant has the burden of proving the defense by a preponderance of evidence.

Chapter X

REMEDIES

As a victim of sexual harassment, you are probably concerned not only with what can be done to stop the harassment, but also what, if anything, is available to make amends for the injuries suffered. Sexual harassment is only one form of sex discrimination and the remedies available depend upon the forum in which relief is sought, in addition to the circumstances of the harassment. If you are a harassment victim, consultation with an attorney will probably prove invaluable.

Remedies for harassment include damages (money) and equitable relief. Payment of monetary damages is intended to compensate a victim for the losses incurred. Equitable relief seeks to bring working conditions into conformity with the law and/or prevent further harassment or misconduct. There are three classifications of monetary damages: (1) special damages to reimburse a victim for her out-of-pocket losses; (2) compensatory damages to compensate a victim for the physical or emotional pain and suffering endured; and (3) punitive damages to punish or make an example of the offender or to deter potential offenders. One or more of these types of damages are generally sought through litigation or other legal proceedings. You may seek to recover for each of these types of damages, in addition to the equitable relief best fitted to your particular situation through settlement negotiations, administrative proceedings, or litigation. Whether or not you are entitled to any or all of these types of damages depends upon a number of factors and an attorney may best be able to answer your questions in this regard. For example, current law prevents payment of punitive damages by a government entity. Thus, if you are employed by a state, county or city agency, punitive damages are not recoverable. They may, however, be recoverable from the harasser, individually.

Characterizing your monetary losses as one of these types of damages will make it easier for you to evaluate your injuries and discuss and pursue settlement or other resolution of your dispute.

Special Damages

Special damages in sexual harassment cases generally consist of medical expenses and lost wages. To ascertain what your special damages are, review what you have spent to deal with the problem and try to assign a value to the benefits of which you were deprived (what you lost).

Medical expenses include costs for prescription drugs and compensation for mileage to and from the doctor or medical care facility. Obtaining medical care can be very expensive; to the extent that costs are not covered by your health insurance, you should be reimbursed for them. You are entitled to reimbursement by your employer even if your health insurance does cover these expenses, since the employer caused the harm. Because medical expenses can be recovered in a lawsuit, if you do suffer from stress or other physical or psychological problems as a result of the harassment, be sure to consult with your physician, and if necessary seek a referral to a psychiatrist or psychologist for professional counseling. A word of caution: should you seek to recover for physical or psychological injuries and the related expenses, your medical history, as well as any information you supply to your physician, may well be made available to defense counsel and the harasser. Again, an attorney can advise you in the handling of these matters. Also, if the harassment is related to your employment and does result in physical injury, your exclusive remedy may be that provided under the workers' compensation laws.

Special damages also include your lost wages. Lost wages are your monetary losses for employment benefits you lost or for services rendered for which you were not compensated. Lost wages can be the difference between your salary and the salary you should have earned had you been promoted. If you have been terminated from your employment, the measure of lost wages is what you would have earned less your actual earnings. If you were terminated or quit your job because of sexual discrimination, you do have a duty to mitigate your damages (that is, to minimize them to the extent possible by replacing lost benefits, or by seeking to prevent further damages, etc.). This generally requires that you seek replacement employment. Many courts are also crediting the choice to obtain education for job/professional career changes as mitigation. You will want to keep records of your employment-seeking efforts. If you are terminated or leave your employment because of sexual harassment, do not hesitate to apply for unemployment benefits. The Employment Development Department requires proof of job-seeking efforts as well, and a diary or other such records will be useful in documenting this.

When ascertaining the measure of lost wages, be sure to include time lost while seeking medical care, and interest at the legal rate on these wages from the date each payment should have been made. If you have utilized or exhausted sick leave, ask for restoration of these days or hours for use in the future. You should also ask for restoration of any other benefits

you have lost. Many employees participate in some form of deferred compensation, frequently a pension or retirement program. Payment of lost wages should include restoration of this benefit if there has been an interruption in service. If a promotion was denied or delayed, the additional contribution based upon the higher salary rate should be added to the deferred compensation fund.

Special damages are frequently referred to as out-of-pocket losses. These losses are different in every case. Clearly, you will want to identify the economic impact of the sexual harassment and determine the amount necessary to restore you to the status of an employee afforded all benefits with no interruption in service.

Special damages can be documented by medical billings, receipts for payment of services or prescriptions, and records of mileage traveled to obtain care. Be prepared to present records for professional services whether attempting to resolve your case through administrative or legal remedies.

Compensatory Damages

Compensatory damages are awarded in an effort to make the harassment victim whole. An award of compensatory damages is intended to compensate the victim for the pain and suffering resulting from the wrongful conduct. The difficult question is how much should that compensation be? What amount of money will compensate a victim for enduring the emotional distress, humiliation, shame, or fear? Obviously, a number of factors must be identified and weighed to answer this question. How often did the harassment occur? How long did the harassment continue? What was the nature of the harassment? Most importantly, what impact did the harassment have on the victim? The diary you keep of the effects of the harassment will be of the utmost importance here. The greater the detail and specificity of your records and recollection, the better your case for and proof of compensatory damages will be. Pay attention to and tell friends and family of the emotional effects you experience: changes in eating and sleeping habits, mood swings, how you feel each day (about work, yourself, your friends and family). Your testimony and theirs will be critical to proving your damages. Additionally, how much, if any, compensatory damages you will seek to recover, will depend upon the forum in which you seek to resolve your case.

Punitive Damages

Under certain circumstances, punitive damages may be recovered. Unlike special damages and compensatory damages, punitive or exemplary damages are not part of making the victim whole. Punitive damages are awarded in a legal or administrative proceeding to punish the harasser or to provide an example that will deter others from engaging in such conduct. There must be proof of oppression, fraud or malice for this type of damages to be awarded; for example, threatening an employee at knifepoint; continued refusal to seriously address a complaint; or deliberate retaliation for filing a complaint.

Equitable Relief

In cases of sexual harassment, the award of monetary damages is generally an insufficient remedy. Often the victim is seeking assistance to stop the harassment, protect herself against retaliatory actions, and restore her to the status of an employee afforded all benefits with no interruption in service. A court of equity has the authority to make such orders or to grant equitable relief. Equity is frequently defined as fairness, justice or right dealing. Whether you seek relief through litigation or through informal settlement negotiations, equitable relief will probably be your most important objective. This is the means of preventing further harassment to you and to other potential victims.

A tool to achieve equity is the injunctive order. An injunction is a court order directing or prohibiting specific conduct. These orders are to prevent future acts, not to punish for past acts. Before a court will issue such orders there must be a showing of threatened injury. Thus an injunctive order, also sometimes called a restraining order, is a very effective remedy if the harassment is ongoing. Injunctions are issued where monetary compensation would not afford adequate relief or where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. If a victim can be adequately compensated in damages, the harm is not irreparable and an injunctive order will not be issued. Often, however, in sexual harassment cases, damages will not provide adequate compensation.

The terms of an injunctive order are determined on a case by case basis. The prohibitions are generally directed at an individual and specific types of conduct. If you are seeking such relief, be prepared to propose the terms of the order. Thus you will need to identify the specific conduct that needs to cease. Prepare a list of the offensive conduct and the means to stop such conduct. For example, if the harassment includes the posting of offensive materials or pictures at the work place, the order would include a prohibition of such conduct. It should also prohibit the dissemination of such materials by any other method. Injunctive orders may include a catch-all prohibition against annoying, harassing, alarming or disturbing the peace of the victim.

Caution must be used in drafting the terms of the order. You want the order to be as specific as possible to achieve your objectives. The harasser can attack an order when the terms are too vague or overbroad. An example of an overbroad order is an order includ-

ing the provision that the harasser not come within a half-mile of the victim's home. A prohibition of coming within 100 yards of the victim will achieve the same objective without depriving the perpetrator of his constitutional rights. An order is too vague if the harasser cannot identify what conduct is prohibited by the terms. This is the reason for listing the types of conduct that you want to cease. An order does not need to be limited to only those types of conduct that have occurred in the past, but may also include conduct that you fear will occur in the future. For example, if the harassment has been by telephone, the order will include a prohibition against contact by telephone. Also including a prohibition against contact by letters, postcards, or the sending of other materials through the mail will be a measure of preventing the harasser from continuing his conduct through a different medium.

Give considerable thought to the terms of an injunctive order. If you have kept a diary of the events that have happened, a review of that will provide you with the list of conduct from which you need protection.

In addition to prohibitions to stop the harassment, affirmative relief may be necessary to correct the devastation of the past acts. When seeking relief through the legal system or negotiating a settlement with your employer for a sexual harassment complaint, remember that the scope of relief can be very broad. Common components of settlement in employment cases include: rehiring if terminated or forced to quit to escape the harassment; promotion made retroactive to the date it should have been made; waiver of a probationary period; and purging an employee's personnel file of any adverse matters created as a result of the harassment.

In resolving cases of sexual harassment in employment, the objective of providing a work place free from sexual discrimination should be in constant focus. Both state and federal laws provide for relief beyond the complaining victim as an effort to prevent further victimization. Achieving this objective through litigation or settlement may result in a remedy that includes the creation or improvement of a company policy against sexual harassment and a procedure for the handling of complaints; dissemination of such policy and procdure to all employees; and educational endeavors for management or all employees on the subject of sexual harassment and other forms of sex discrimination. Consider the necessity of restructuring or implementing a seniority and/or promotional system to enable scrutiny by objective standards in addition to subjective standards, thus limiting the ability of an employer to make decisions premised upon compliance with demands for sexual favors. Negotiated settlements have included provisions for disciplining the perpetrator, including termination in flagrant cases; relocation of the perpetrator to another facility; and posting of the settlement or the disciplinary actions taken by the company at the work place.

Relief achieved through settlement negotiations may include broader terms than can be obtained through court proceedings. Employees and employers should approach settlement creatively. You know your employment situation better than your attorney or representative. Consider what needs to be accomplished to make it a better place to work. The Sexual Harassment in Employment Project that prepared this handbook was the product of a creative approach to settlement in an action against the State of California. Creation of the Project was to further the objective of preventing harassment on the job both where the original offensive acts occurred as well as throughout the entire state. Hopefully, the Project helped minimize liability for sexual harassment by its endeavors to educate and disseminate information to all employees and employers of the State of California. Thus this creative relief really was in the best interest of both the plaintiff and the defendant in that particular action.

Sexual harassment is against the law. Resolution of a complaint of sexual harassment, to be truly successful, should benefit the complaining victim and prevent future victimization.

Chapter XI

DECIDING WHETHER TO USE THE CRIMINAL JUSTICE SYSTEM

Overview

Sexual harassment is not, *per se*, a crime in California. Rape, assault, and battery are crimes; if any of these forms of sexual harassment has been experienced, the victim may seek the assistance of the police and the District Attorney's office. But if the harassment included neither physical contact nor the threat of immediate injury, the criminal justice system may provide no relief.

If someone seriously alarms, annoys or harasses a woman, and causes her to suffer "substantial emotional distress," the woman can use the California civil justice system to get a temporary restraining order, and then an injunction, prohibiting the harassment. (See above section on preventing harassment in the community through the use of CCP § 527.6.)

Some sexual harassment victims may be unsure whether or not a particular incident of harassment against them constituted a crime. Generally, any unwanted physical contact, regardless of whether it was painful or harmful, may constitute a criminal battery. Criminal assault usually applies where there was a threat of immediate physical injury; the threat of unwanted contact is probably not sufficient for a criminal charge. The laws of each state are different. In California, Penal Code section 242 defines battery as "any willful and unlawful use of force or violence upon the person of another," and section 240 defines assault as "an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another."

If the sexual harassment experienced qualifies as a crime, the victim may then want to consider the advantages and disadvantages of using the criminal justice system. (See Appendix for sample criminal rape complaint, subpoena, and "information".)

Definitions

The following are definitions of various violent crimes you may be subjected to as a victim of sexual harassment. They are taken from the California Penal Code:

Rape (Penal Code Section 261). Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

1) Where a person is incapable, because of mental disease, defect, or disorder or because of physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act . . .
2) Where it is accomplished against the person's will by means of force or fear of immediate and unlawful bodily injury on the person of another.
3) Where a person is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, administered by or with the privity of the accused.
4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused.
5) Where a person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused with intent to induce the belief.
6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph "threatening to retaliate" means a threat to kidnap or falsely imprison or to inflict extreme pain, serious bodily injury or death.
7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

Unlawful Sexual Intercourse (Penal Code Section 261.5). Unlawful sexual intercourse is an act of sexual intercourse accomplished with a female not the wife of the perpetrator, where the female is under the age of 18 years.

Rape of Spouse (Penal Code Section 262). Rape of a person who is the spouse of a perpetrator is an act of sexual intercourse accomplished against the will of the spouse by means of force or fear of immediate and unlawful bodily injury on the spouse or another, or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this subdivision "threatening to retaliate" means a threat to kidnap

or falsely imprison, or to inflict extreme pain, seriously bodily injury, or death. . . .

Battery (Penal Code Section 242). Battery is any willful and unlawful use of force or violence upon the person of another.

Sexual Battery (Penal Code Section 243.4). Sexual battery is defined as follows:

a) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. . . .
b) Any person who touches the intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched and if the touching is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. . . .
c) Any person who for the purpose of sexual arousal, gratification or abuse, causes another, against that person's will while that person is either unlawfully restrained by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery. . . .
d) As used in this section, "intimate part" means the sexual organ, anus, groin, or buttocks of any person, and the breast of a female. Sexual battery does not include the crime of rape as defined in Sections 261 and 289. As used in this section, "touches" means physical contact with the skin of another person whether accomplished directly or through the clothing of the person committing the offense. . . .

Assault (Penal Code Section 240). Assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

Other Violent Crimes: *False Imprisonment* (the unlawful violation of the personal liberty of another; found in Penal Code section 236), *Sodomy* (forced sexual conduct consisting of contact between the penis of one person and the anus of another person . . .; found in Penal Code section 286), *Oral Copulation* (the act of forcefully copulating the mouth of one person with the sexual organ or anus of another person . . .; found in Penal Code section 288a), *Assault with the intent to commit rape, sodomy, or oral copulation, etc.* (Penal Code section 220).

Advantages

Criminal prosecution is quicker than a civil court action. The victim does not have to pay an investigator or a lawyer, since the District Attorney's Office handles the case. The filed charges and any resulting conviction will be on the harasser's police record.

Disadvantages

Once the District Attorney undertakes a prosecution, the victim no longer controls her case. The woman will have no input into: (1) what the harasser is charged with; (2) whether plea bargains are offered and what they are for; and (3) what evidence is brought in or left out at trial, including information about herself. (In California, laws have been adopted preventing the introduction of evidence in a rape trial (and in civil actions alleging sexual harassment, sexual assault and/or sexual battery) concerning the victim's history of sexual activity, unless it concerns sexual conduct with the man charged.) Often the woman's feelings may be ignored if the district attorney is not particularly sensitive.

A problem that has been found in domestic violence prosecutions may arise in some sexual harassment cases as well. Where the harasser and the woman know each other, as in domestic violence situations, the police are likely to perceive incidents as family matters, and take their law enforcement responsibilities less seriously. Likewise, prosecutors may be affected by the fact that the parties are acquainted, and be less likely to prosecute.

A final concern is that many people find the criminal justice system has a class bias. For example, upper-class white rapist harassers who are convicted are more likely than minority group rapist harassers to be sent to a "therapeutic" institution for rehabilitation instead of being sentenced to a full prison term.

If You Become a Sexual Assault Victim

Many sexual assault victims do not know how to get help or what to do. They may be afraid to talk to anyone or may try to act as if nothing happened. If you have been assaulted, get help immediately. Call your local law enforcement agency or a local rape crisis center. They can take you to a hospital and get information about the crime.

If you do not want to talk with the police right away, get help from a friend, your doctor, hospital emergency staff, or a crisis center near you. Rape crisis programs usually have a 24-hour hotline listed in the phone directory.

The most important thing to remember after an attack is that it is not your fault and that if you want to pursue some relief through the criminal justice system you must not destroy any possible evidence.

This is sometimes difficult because of a tendency to want to clean up, but it is critical that you do not change your clothes, shower, wash or douche until after you have contacted the local law enforcement authorities or a rape trauma center and have been taken to a hospital.

It is sometimes difficult to remember, because of stories we all hear, but law enforcement *is* on your side. Great strides have been taken to make sure that officers are sensitive to the effects of this violent crime. Officers should not judge you. You will need to fully cooperate to help them in their efforts to catch the attacker. Even if you do not choose to press charges, the information you give the police may be helpful in other cases where others have been subjected to similar violent crimes.

If you call your law enforcement agency, the first thing that they will do is make sure that you are safe and help you get to a hospital. They will also question you before or after you go to the hospital. Then they will examine the place where the crime occurred. A detective may also talk to you soon after the attack and will ask you some very specific and difficult questions about what happened. She/he needs to know *exactly* what happened, so do not be embarrassed by the explicit and direct nature of the questions. The more information you give, the better your case will be. Remember, a crime has been committed against you. You are not to blame and, as with any other crimes, the details are critical to its solution.

Court And District Attorney Procedures

After completing its investigation, the law enforcement agency presents its case to the County District Attorney's Office (or the City Attorney's Office in certain locations). There will usually be a specific Sexual Assault Unit, which consists of experienced Deputy District Attorneys, investigators, and victim assistants who specialize in sexual assault cases. A Deputy District Attorney from that unit will be assigned to handle the case from beginning to end to assure that the case receives the most thorough and professional attention possible and also to avoid the need for you to repeat your story to more than one prosecutor.

The first contact you will have with the District Attorney's Office will probably be with a Sexual Assault Victim Assistant, a member of the Victim/Witness Assistance Unit. This unit is staffed by specially qualified personnel who will remain in contact with you to help you to cope with court appearances and to find medical, psychological and financial assistance and compensation. This establishes a direct line of communication between you and the District Attorney's Office.

The Deputy District Attorney assigned to the case will review the evidence submitted by the law enforcement agency to determine if there is sufficient evidence to prove that a crime has been committed and that the defendant committed it. To arrive at that decision, the Deputy District Attorney will review police reports, laboratory reports, medical-legal examination reports, photographs, tape recordings, and physical evidence. She/he may request that additional investigation be undertaken, and in some cases will personally interview you.

A defendant is entitled by law to be released "on bail" in all criminal cases except those which carry a punishment of death or life without possibility of parole. The fact that the defendant is released on bail does not mean that he may harass you. The deputy district attorney will request that the court impose the condition on the defendant's release that he not contact you in any way. You will be informed of the defendant's conditional release and if he violates the condition in any way, the district attorney may take steps to have the defendant re-arrested and placed in jail with higher bail.

Victim's Prior Sexual History

There are some limited circumstances in which a defense attorney may introduce evidence, or ask the victim questions, about her prior sexual history. The law has, however, made it more difficult for the defense attorney to introduce such evidence. He must first convince the judge, by affidavit, that evidence of the victim's prior sexual history has some relevance to the case. Under Evidence Code section 1103, such evidence is NOT relevant to a "consensual intercourse" defense, unless the prior voluntary sexual conduct was with the defendant. If the court believes that this prior history of the victim may be relevant, it will hold a hearing to determine whether the defense attorney should be able to present the evidence in court.

Preliminary Examination

In California, shortly after the arraignment you will receive a subpoena, which is a command by the court to appear at the preliminary examination at the appropriate time, date, and place. The Sexual Assault Victim Assistant can arrange to have the subpeona served at your convenience.

The preliminary examination will be set within 10 days of the defendant's arraignment. The defendant, however, may ask that the case be "continued" or postponed. Therefore, you may be subpoenaed more than once for different dates before the preliminary examination is held. On the day of the preliminary examination, you will go to the District Attorney's Victim/Witness waiting room until called into court. You may be required to wait two to three hours before the case in which you are testifying is called.

At the examination, you may have any female of your choice present and/or the District Attorney Victim Assistant (Penal Code, §868.5). The witnesses,

including the victim, are usually not allowed in the courtroom, except when they are personally testifying. In California, neither the victim nor the district attorney may require that the courtroom be cleared of spectators or closed to the public. The law sometimes, however, gives that right to the defendant.

At the preliminary investigation, a defendant has all of the rights he has at trial, except that there is no jury. You will usually be called to testify at the examination. If, at the end, the court determines that there is probable cause to believe that the defendant committed the alleged crime, the defendant will be "held to answer" to the charges in Superior Court, California's Court of general trial jurisdiction, which is responsible for the trials of felony cases.

If the evidence is insufficient to prove the charges "beyond a reasonable doubt," the District Attorney may be unable to proceed with the prosecution of the case. Such a decision does not mean that the District Attorney's Office does not believe you. You will be fully informed of the reasons for not prosecuting the case. If the District Attorney determines that the evidence is sufficient to establish guilt "beyond a reasonable doubt," she or he will prepare, sign, and file with the Superior Court a document called an "information." This is essentially the same as a complaint, though it may contain additional allegations, such as prior felony convictions of the defendant which may prevent him from getting probation and/or add to his sentence, or may be used to impeach his credibility in telling his version of what happened. (See Cal. Evid. Code, §788.)

Information If You Appear As A Witness

In both the preliminary hearing and the actual trial, as a witness for the People of the State of California, you will first be questioned by the Deputy District Attorney trying the case, which is referred to as "direct examination." The defense attorney then conducts "cross-examination," which is often difficult, but which you should not fear. It may appear that s/he is trying to discredit you or to pin you down to too much detail, but the defense attorney has the right to test your recollection to find out how your memory of the facts compares with the memory of others. The defense also has a right to challenge your credibility.

The following are suggestions for you if you plan to appear as a witness:

1. It is important to appear neat and wear the proper dress in the courtroom. You should avoid any distracting mannerisms and appear to have proper respect (do not chew gum, smoke, wear sunglasses, etc. in the courtroom).
2. Do not guess or speculate. If you do not know, say you do not know. If you do know, give positive, definite, and sure answers. Appear confident.
3. You are sworn to tell the truth, so tell it! If you tell the truth accurately, you have nothing to fear on cross-examination.
4. Do not volunteer information which is not actually requested.
5. Take your time and explain your answer if the answer cannot be correctly understood on the basis of a simple "yes" or "no."
6. Be serious in and around the courtroom.
7. Speak clearly and loudly enough so that everyone in the courtroom can hear you easily. Always give audible answers so that the court reporter can make an accurate record. Do not speak too quickly.
8. Look directly at the person who asked you the questions.
9. Be aware of questions involving distances and time. If you make an estimate be sure that everyone knows it is just an estimate.
10. Always be courteous, even if the lawyer questioning you may appear discourteous.
11. Do not lose your temper, no matter how hard you are pressed. Practicing your testimony will help you prepare psychologically for the courtroom.
12. Avoid jurors during recess and avoid letting them talk to you. During the trial do not be afraid to look them in the eye and tell your story. They want to hear what you have to say.

Sentencing

If, at the end of the trial, all 12 jurors (or the judge in a court trial) are convinced of the defendant's guilt "beyond a reasonable doubt," they will return a verdict of "guilty." If they believe there is a "reasonable doubt," as to the defendant's guilt, they will return a verdict of "not guilty." If the jurors cannot agree, the court will declare a "mistrial" and either dismiss the charges or reset the case for a new trial.

If the defendant is found guilty, the court will set a date for sentencing. The following shows the most common ranges of state prison sentences for various sexually violent crimes:

Rape—three, six or eight years in state prison.

Forcible Sodomy—three, six, or eight years in state prison.

Forcible Oral Copulation—three, six, or eight years in state prison.

Assault with Intent to Commit Rape, Sodomy, or Oral Copulation—two, four, or six years in state prison.

Unlawful Sexual Intercourse—one year in county jail or 16 months, two, or three years in state prison.

Financial Assistance for Victims

If you have suffered serious financial hardship from medically-related expenses or loss of wages as a result of a violent crime, you may be eligible to receive compensation from the State of California Victims of Violent Crimes Program administered by the State Board of Control. The state provides compensation to victims of violent crimes if they suffer serious financial hardship in an amount of more than $100 or 20% or more of the victim's net monthly income, whichever is less. Coverage may include necessary medical expenses, lost earnings, child care, and costs of job re-training. Attorney fees up to 10% of the award may also be available. To receive this state compensation you must have suffered physical or emotional injury as a result of a violent crime and must have been a California resident when the crime occurred.

A victim of any crime may not receive compensation if she refuses to cooperate with the police in apprehending and prosecuting the assailant. California, unlike many other states, allows for compensation to victims who live with the assailant.

Victims of a crime of violence, their families, or any person dependent on the victim for support, may file a claim with the Victims of Crime Unit of the State Board of Control, provided that the crime was committed in California and that the applicant was a resident of California. The claim must be presented by the claimant to the Board of Control within one year of the date of injury or death.

Information and application forms about compensation to victims of violent crimes may be obtained from the State Board of Control in Sacramento (see address below), from a local Victim Witness Assistance Program, or from the police, sheriff, or other law enforcement agencies. A sample form is included in the Appendix for your information.)

For more information contact:

Victims of Violent Crimes
California Board of Control
P.O. Box 3036
707 L Street, Suite 700
Sacramento, CA 95812
(916) 322-4426
ATSS 492-4426

Chapter XII

MISCELLANEOUS ISSUES

Using Expert Witnesses

Psychologists and other mental health professionals can play at least two roles as expert witnesses in court cases involving sexual harassment. One role is played by a psychiatrist, licensed clinical psychologist, or social worker who can evaluate the mental state of the victim or the harasser. A clinical psychologist can be called to determine whether any psychological damage has been suffered as a result of the harassment. A research psychologist, who has studied the phenomenon of sexual harassment can comment on events that occurred and the typical responses to sexual harassment.

Research suggests that most individuals do suffer some level of distress from the sexual harassment. The usual way of showing that someone has suffered psychological distress is to show that they sought medical or counseling services. Despite the fact that many people suffer distress without seeing a professional, it is very difficult to convince others that one has suffered distress without either physical symptoms and/or the diagnosis of an expert—a clinical psychologist, psychiatrist or other professional. Thus, it becomes helpful in many court cases to insure that a therapist has been involved in counseling.

There is a negative side to the use of clinical experts, however. If you are found to be experiencing psychological problems, it may be difficult to tell whether the problems existed before the harassment or if they were the result of the harassment. In some court cases which claim psychological trauma as a result of harassment, the defendant invariably argues that there were psychological problems to begin with and that these problems caused the plaintiff to imagine, exaggerate or mis-manage the harasser's advances. Usually each side has a clinician—a psychiatrist or a psychologist—one of whom argues that according to his/her tests, the plaintiff has had psychological problems all along, the other of whom argues that according to her/his tests, the plaintiff was normal and psychologically healthy until the onset of the harassment. The qualifications and experiences of the expert, the accuracy of the diagnosis, the consistency of the diagnosis with other evidence, among other things, all contribute to the usefulness of the clinical expert witness and determine which expert the jury will believe.

The research psychologist plays a very different role in sexual harassment court cases. Research psychologists who have studied sexual harassment, aspects of women's working conditions, reward systems in organizations, sex discrimination, and related areas are useful in court cases. Because sexual harassment is still a fairly new area of litigation, many judges, magistrates, and jurors may not be very familiar with the issue, its frequency and its effects on individuals and organizations. A research psychologist can explain the frequency with which harassment occurs, what a typical case looks like, the conditions under which it frequently occurs, typical responses and reactions of harassers and victims and typical consequences and effects.

The research psychologist can provide the judge and jury with essential background facts to assist them in the evaluation of the plaintiff's charges. Such testimony can sensitize jurors and magistrates to the anguish experienced as a result of sexual harassment. For example, research shows that most managers and most working people think that employees should be able to handle overtures or propositions that come their way, and many working people think that people who are propositioned must have encouraged the advances. Yet most sexual harassment victims say that they did nothing to encourage the advances and most say that they are not at all responsible for their harassment. And many victims report that being harassed has affected their job performance and their relationships with men at work and outside of work. Knowing these facts can be useful to decision-makers trying to evaluate a specific case of alleged harassment.

The information provided by the research psychologist can also lend credence to, or call into question, the reports of harassers, victims, and other observers or participants. This evidence can be useful, in part, because most instances of sexual harassment do not involve witnesses and the plaintiff and defendant often have very different views of the same experiences. Without witnesses, accused harassers simply may deny that they ever did any of the acts alleged by the plaintiff. A victim whose experiences are similar to the experiences of other victims (studied in surveys and other research projects) may be more believable than a victim who does not have a basis for comparison. For example, a defendant's attorney may charge that a plaintiff was not really harassed (and certainly not distressed) if she stayed on the job while she was being harassed. The research, however, shows that many victims of harassment stay on their jobs even though they are being harassed. Some think that the harassment will stop if they ignore it; others do not want to leave their jobs but also do not know how to complain about the harasser, or feel that complaining will not

do any good; others cannot afford to leave the job without another job offer. Many question why they, as good workers, should leave jobs they have worked hard to obtain.

A research psychologist is also likely to have formed opinions about what constitutes harassment, the effects of harassment on workers and organizations, how organizations should handle cases of alleged harassment, and what constitutes a comfortable but professional work environment. The opinions are informed by research findings and study, not just personal preference or values, which makes them more useful in a court case.

The Role Of Educational Workshops

Sexual harassment can be seen as an expression of the basic male-female power differential of our society. Education can help women to recover and men to relinquish some of that power and can chip away at the imbalance betwen the sexes.

Before we can change the power differential, we must be able to recognize it, in all its guises. Therefore, it is vital that both men and women learn to recognize all the kinds of behavior that are felt by women to be sexual harassment.

Education can be crucial in accomplishing widespread recognition of the extent of the problem. Education can also serve additional functions: to create a community-wide understanding of what sexual harassment is and how widespread it is; to help empower women, ourselves and each other, to begin to act against harassment; to point out to men the behaviors that are experienced by women as sexual harassment; and to foster a sense of community responsibility for combating all forms of harassment.

The type of teaching and learning called for by these educational goals cannot be accomplished by merely having an "expert" lecture to a classroom of students. It will be most successful if we create learning environments in which each participant is called upon to actively participate, drawing from his or her own experiences. Workshops which include small group discussions and role playing, with facilitators to direct discussion and mediate where necessary, have been found more effective in beginning to carry out the educational goals listed above. Such workshops have been sponsored by unions, private employers, school groups, community groups, public agencies and political organizations.

The following discussion will focus on the contents of such a workshop:

The aim of any educational workshop must be to help the participants recognize the existence and extent of sexual harassment and create for themselves a definition of it. Obviously, for a group discussion to draw in all the participants, they must feel emotionally safe, that is, safe from a negative response which would inhibit their free expression. Thus, the workshop organizer will have to consider at the outset whether separating women and men into separate groups for discussion will be more conducive to comfortable, open discussion. The possibility should be considered that some men in the group will express resentment and anger that comes up in the course of such a discussion, and that expression of such resentment or anger might inhibit women from expressing their own feelings about men and harassment, particularly if they feel some timidity about expressing these feelings generally.

In what follows, for the sake of clarity, proposed workshop content will be discussed as if the women's discussion is separate from the men's. The final organization of a particular workshop depends on the planners and the participants.

Model For Men's Discussion Groups

(Editor's Note: The following section was prepared by members of M.O.V.E. (Men Overcoming Violence) and the Oakland Men's Project and is based on their experiences in conducting men's discussion groups.)

To be most effective, a discussion among a group of men should be facilitated by a man, when possible. In addition, since the facilitator should be a person the group members can identify with, if the group consists of men of color, a discussion leader of similar color, background and experience will be more easily accepted and least likely to bring on additional resentments that might interfere with free discussion.

The first step in a workshop discussion among men is to create and foster understanding and empathy for women as the victims of sexual harassment. There are many ways to do this: The group may focus on their own negative experiences of whatever type they have encountered in their past or present; they can delve into the situations in which their individuality has been ignored or denied, or where they are viewed as less capable and less worthy of respect. Most men of color may find this easy to do since they have not, as a group, held the majority of positions of power in this country; white men may have to search for particular times in their lives when they lacked power, for instance as a youngster or in the military.

Once empathy has been established, it must be directed. Group discussion should turn to a consideration of why it is in men's interest—these men in particular—to become and remain aware of sexual harassment, and to work to stop it in themselves and in others. The issue of distrust and alienation between men and women should be brought up: once this rift is acknowledged, its causes can be discussed. While many causes may certainly be identified, any recognized victimization may be counted among those reasons. Again, the participants can be reminded to consider how incidents in their own

lives resulted in a rift between themselves and the perpetrator. Finally, the group should consider how certain behavior toward women objectifies and demeans women as a class, and denies each woman's individuality and humanity; and how, as a result of that, women must withhold a certain amount of trust from men. If a man decides that the trust of women is of concern to him, such a discussion can help him modify his behavior to earn that trust.

In a discussion among men, it is also important to promote understanding of commonly held beliefs about women which are not true. For instance, it may be common belief that: women who wear stylish clothing are "asking for" sexual attention, women appreciate cat-calls or whistles from strangers, asking a female co-worker (or subordinate) about her sex life is simply a friendly gesture. Even if many participants are convinced that these ideas do hold true in instances they can think of, reasons why many other women may *not* appreciate or welcome that same behavior can be discussed. For example, participants can be asked to imagine how their mother, wife or daughter might respond. The recognition that *some* women may be intimidated, insulted, and alienated by a particular type of behavior may influence a man to rethink his position or at least to use some caution if he does not want to see himself or be viewed as a sexual harasser.

Discussion along these lines should make clear that all these misconceptions are promulgated by society. No one should feel guilty for having accepted, believed, or acted upon them. The goal of the workshop should be to provide direction for men to change their harassing behaviors.

Model for Women's Discussion Groups

To be most effective the same considerations discussed above for men's groups should be used in the formation of a women's group. The discussion should include: identifying all of the overt and the subtle forms of harassment, the response evoked in women experiencing it and, ways to help women act effectively against the harassment, including administrative/legal options.

This can begin by compiling a list of the types of sexual harassment and subsequent feelings experienced by the participants.

Role Playing

Role playing can be used to illustrate ideas brought up in discussion. It also can be very useful to help participants consider alternative responses to a harassment situation. Role plays can demonstrate harassment and responses, experiment with responses, or help participants actually practice the ways they have decided are most useful to them in responding to the harassment. By practicing appropriate responses in a workshop, women can better deal with harassment situations.

Using an educational setting to teach methods of dealing with harassment has several advantages. The feeling of empowerment it grants to women in their personal lives is enormous, as any woman who has spoken out against harassment can confirm. As more men are confronted with their harassing behavior, more will learn that such behavior is inappropriate and will not be tolerated.

Facilitators should discuss the importance of finding allies when attempting to respond to a harasser. The facilitator should also stress the responsibility they all have to support anyone experiencing sexual harassment. One of the most important requirements in combating harassment is counteracting the isolation of the sexual harassment victim.

The advisability of choosing not to confront the harasser in certain situations should also be discussed. Where the woman is isolated, where there is a lot of hostility, where it seems likely that a man or woman will act in support of the harasser the woman may want to seek assistance or advice before proceeding because all of these are potentially dangerous situations in which to confront the harasser head-on.

Special Problems

It is possible that any of the above activities will bring up prejudices and accepted stereotypes in the minds of the participants, particularly those based on race, ethnicity, or class. Because such prejudices may either be spoken or implied, it is important that facilitators be sensitive to this potential and pick up on such feelings and use them as a focus for discussion. It should be acknowledged that it may be easier for this society to blame men lower in status or class for the harassment we encounter and the fear we feel, rather than to admit that the harassment and the fear act to keep women from breaking down the power base now held by white men. It is important to emphasize that racist misconceptions are perpetuated by our society; it is not an individual woman's fault for accepting or believing these misconceptions. An issue of extreme complexity is that of harassment by a man in a woman's own family, or a man with whom the woman is involved in some personal relationship. Such harassment in its extreme forms may include physical violence and humiliation such as in the case of rape or sexual assault and battery. Because appropriate handling of the problem will depend on the nature of the bond between the people, a general workshop may not be able to deal effectively with such a situation. The facilitators should inform the participants about organizations for men, such as Men Overcoming Violence (M.O.V.E.) in San Francisco, or the Oakland Men's Project which help men deal with their violence and anger.

The education offered in workshops such as those

outlined above can help lead to strengthening women and men, weakening the threat of sexual harassment, and creating meaningful change in our society.

Sexual Harassment Training For Management

Editor's Note: The following section on how to design an effective sexual harassment training program for managers was prepared by a professional trainer. It is to serve as an example of how a professional trainer approaches management. Because corporate management is often reluctant to take the issue seriously, it is necessary to convince them of the seriousness of the issue to the organization and the value of training to mitigate liability and improve productivity. Similar models can also be developed for use in schools and other arenas because the principles discussed are readily adaptable for many other contexts.

DAMN THE ICEBERGS, FULL STEAM AHEAD!

(How to Design Effective Sexual Harassment Training Programs)

Sexual harassment waits silently at night, like an iceberg, for the corporate ship whose captain does not believe in its existence. Then, striking with the suddenness of a torpedo, sexual harassment jars the work place. Work groups, departments, or even divisions collapse, but the ship seldom sinks. Instead, the ship shudders, heaves to one side, and diverts valuable resources to prevent further damage and to salvage what is left. Unreported sexual harassment may slowly rust the ship from within, weakening the corporate image and the teamwork of its male and female employees. In either situation, the damage is real—whether its cause is attributed to sexual harassment or just buried with other employee turnover statistics.

"We don't have a problem with sexual harassment because we have not received any sexual harassment complaints." This retort is management's (primarily male) response when asked if sexual harassment is occurring within their work place. The challenge faced by departments responsible for dealing with sexual harassment is to convince management to support a training program when they do not perceive there is a need for it. Management often does not realize that their employees will not talk with them about the issue because (a) they do not know what their rights are, (b) who to talk with, or (c) do not believe that anything will be done if they do talk. Therefore, because many management personnel don't have the factual information to make decisions about preventing and resolving sexual harassment in their work places, they use misinformation. That misinformation often is influenced by personal beliefs, biases, and stereotypes about men and women in the work place. Employers who train their employees to recognize, prevent and resolve sexual harassment situations will sail more safely.

This section will discuss the following:

- Ideas and training concepts for designing and conducting effective sexual harassment training programs, i.e., participants knowing their legal liabilities/responsibilities, understanding how to determine when behavior crosses the line between friendly and sexually harassing interactions and understanding how to identify and effectively resolve sexual harassment situations.
- How to gain management's support.
- Sample program learning objectives for sexual harassment training programs for:
  a. management personnel
  b. employees
  c. EEO/personnel/industrial relations.
- A list of participant statements and frequently asked questions.

A sexual harassment training program will only be effective for management and non-management males and females if it is unbiased and relevant to their specific work situations. The following ideas/training concepts are suggested as being the foundations for all sexual harassment training programs.

Ideas And Training Concepts

- Top management must support the programs and make attendance mandatory.
- The trainer must be professional at all times and take the issue seriously because he or she is the role model for how sexual harassment is dealt with in the training program.
- The trainer should know the audience, i.e., jargon, history of sexual harassment situations, sexual harassment policy, complaint process, sex-segregated or integrated work places.
- Most men and women agree that, if a supervisor tells an employee to go to bed with him/her or the employee will lose his/her job, or if an employee is assaulted or threatened physically if he/she does not comply, that is sexual harassment. The challenge of the trainer is to close the male/female perception gap concerning *other* behaviors that constitute sexual harassment, and how often they occur.
- It is counterproductive to accuse all men of being insensitive to the issue, or of being "potential" sexual harassers, just as it is to accuse women of being oversensitive, and of bringing on sexual harassment because of their "provocative clothing, mannerisms," etc.
- The majority of sexually harassing behavior occurring today is comprised of interactions subject to various interpretations. To some persons

this behavior is welcome, but to others it is demeaning and, therefore, constitutes sexual harassment. In order for us to understand when the line is crossed from friendly to sexually harassing behavior, it is necessary to separate the intent of our behavior from its impact.

- The employer/supervisor must understand how to create an environment that encourages recipients of unwelcome behavior to talk with their harasser or employer.
- The trainer should have positive expectations of the participants' ability to understand the issue, and assume that they don't want to sexually harass other employees. Although many of the participants may joke or laugh about the issue, an *effective* training program will always persuade the multitude of them that it is a serious issue and deserves their support.

An Effective Sexual Harassment Training Program Will:

- Encourage recipients to personally, or through their employer's complaint process, resolve their sexual harassment situations.
- Provide clarity concerning the specific differences between friendly and sexually harassing behavior.
- Encourage an environment in which sexual harassment is taken seriously, and where males and females are not paranoid about interacting with each other when dealing with the problem.
- Clarify the employer's management's, and employee's responsibilities to create a sexual harassment-free work place and to take appropriate corrective action if a sexual harassment situation occurs.

Sexual harassment surfaces diverse and sometimes volatile emotions in its participants. Participants may not be aware of what they are angry about, or what they are implying when they make a statement. Therefore, the trainer must understand how to deal effectively with the open and hidden agendas. When trainers are sensitive, educated, unbiased, and conduct the program in a professional way, they will encounter less hostility. Additionally, the training program will be much more effective.

How To Gain Management's Support

When trying to convince management to sponsor and support sexual harassment training programs, apply the following ideas:

- Anticipate questions, concerns, fears and objections, and have answers ready for each of them.
- Arm yourself with factual information (e.g., results of an internal sexual harassment survey).
- Practice your approach, questions and answers.

Offer specific options for approaching the issue, all of which you support and which are in the best interest of the employer.

- Emphasize the tangible gains for the employer, management personnel, and employees if the programs are initiated.
- Build a power base by finding male and female management personnel who support the issue.
- Select a time to discuss the issue carefully.
- Be professional.
- Do not personalize management's negative response or insensitivity regarding the issue or initiating training about it.
- Always think about asserting what is in it for the employer and management!

When an employer does not support sexual harassment prevention education, the following responses to management's objections to training can be used to explain why training should be undertaken.

Some of management's concerns, objections and hesitations for starting prevention education training are:

It will encourage sexual harassment complaints!

Response: Sexual harassment situations either do or do not exist in the work place. If sexual harassment is occurring, the employee will now be encouraged to deal with the situation personally, or she/he will now know who to talk with to get assistance in resolving their situation. If they are not occurring before the program, they will even be *less* likely to occur in the future.

Employees will now bring false charges of sexual harassment!

Response: Even if employees have not received training in their work place, they often hear about the issue in the media. Nothing can stop an employee from trying to abuse an employer's grievance/complaint process, but the employer can protect itself from false charges by having trained and informed personnel to deal appropriately with false charges. An uneducated, uninformed employer and managment personnel are much more vulnerable to false charges than are educated employers. Ingnorance about sexual harassment is not bliss, but expensive. Employers know that it is cost-effective to train their employees to be safe workers. The same is true for preventing sexual harassment.

It will polarize our male and female employees!

Response: There already is a polarization of many male and female employees around the issue of sexual harassment. It just has not been obvious. Instead, women will talk amongst themselves about men to watch out for, which departments do not sup-

port female employees, who not to go on a trip with, and who not to get isolated with in the copy room. Men who have heard about the issue, but do not understand it, will not want to work or travel with a woman to protect themselves from charges of sexual harassment. Effective training clarifies what is and is not sexual harassment, responsibilities of each employee, and how to deal with situations effectively and informally. Sexual harassment prevention training closes the male/female perception gap and dramatically decreases misunderstandings about the issue. This enables men and women to work together more effectively and reduces employee turnover.

We have higher priorities, or there is no money budgeted for this issue!

Response: It is the Catch-22 dilemma for trainers. The employer does not perceive that sexual harassment is a problem because of the lack of complaints. Employees will not talk about the issue because they do not know who to talk with, what their rights are, or do not believe that they will be taken seriously. Employers are losing money by waiting until they have had a major sexual harassment situation before they commit themselves to prevention education.

The following approaches may convince top management of the need for a program.

- Do a survey of your employees and use the results to give management feedback on the extent of sexual harassment in their work place.
- Do a small pilot program for select personnel and have them sell the program for you.
- Find male management personnel who are sensitive to the issue and have them support your efforts to establish a training program.
- Focus your efforts on showing management that sexual harassment is not a women's issue but a management issue that affects all employees.

Sample Learning Objectives For Sexual Harassment Training Programs

Outlined below are learning objectives for three different sexual harassment training programs. Learning objectives for each program may be added or deleted to shorten or lengthen each program. The approximate program length is indicated for each program.

Each program should include: question and answer time, small group discussion, practice exercises to apply the techniques discussed in that program, and mini-lectures and scenarios to dramatize and clarify what is and is not sexual harassment.

Management Personnel—Program Length 2–8 Hours

This program is designed to reduce an employer's potential legal and financial liability by teaching management personnel to prevent, recognize, and take "appropriate corrective action" to resolve sexual harassment situations in their work place.

Objectives

Upon completion, management personnel will be able to:

- Apply their employer's definition of sexual harassment and policy statement to their work place.
- Recognize their own and the employer's legal responsibilities and potential financial liabilities based on current court decisions and state and federal laws.
- Determine how sexual harassment could occur in their work place.
- Identify blatant-to-subtle forms of sexually harassing behavior in their work place.
- Recognize and minimize barriers which discourage victims of sexual harassment from talking to management.
- Recognize the specific effects of sexual harassment on its victims and the work place.
- Identify and apply specific techniques for preventing sexual harassment in their work place.
- Identify and apply specific methods for receiving and resolving sexual harassment complaints at the management level.
- Determine when to take action and what is "appropriate corrective action."

Employee Program—Program Length 1–4 Hours

This program is designed to reduce the employer's and employee's potential legal and financial liability by teaching employees to recognize, prevent, and personally, or through their employer's complaint process, resolve sexual harassment situations.

Objectives

Upon completion, employees will be able to:

- Apply their employer's definition of sexual harassment and policy statement to their work place.
- Identify blatant-to-subtle forms of sexually harassing behavior in their work place.
- Recognize the specific effects of sexual harassment on its victims and the work place.
- Recognize their own legal responsibilities and potential financial liabilities based on current court decisions and state and federal laws.
- Identify and apply specific techniques to personally, or by using their employer's complaint process, resolve sexual harassment situations.

EEO COUNSELORS/PERSONNEL—
Program Length 4–16 Hours

This program is designed to reduce the employers' potential legal and financial liability by teaching EEO counselors/personnel to recognize, prevent and to take appropriate corrective action to resolve sexual harassment situations in the employer's work place.

Objectives

Upon completion, EEO counselors/personnel will be able to:

- Apply their employer's definition and policy statement concerning sexual harassment when resolving sexual harassment situations.
- Recognize their employer's legal responsibilities and potential financial liabilities based on current court decisions and state and federal laws.
- Determine what are appropriate corrective actions as defined by state and federal laws when resolving sexual harassment situations.
- Recognize blatant-to-subtle forms of sexually harassing behavior in their employer's work place.
- Identify and minimize barriers which discourage sexual harassment victims from giving their employer the opportunity to resolve the situation.
- Recognize the specific effects of sexual harassment on its victims and the work place.
- Identify and apply specific methods for receiving and resolving sexual harassment situations as a third party.

Participants' Frequent Statements And Questions About Sexual Harassment

This list of frequently asked questions and statements made by participants may be used by trainers to prepare themselves for their sexual harassment training program.

- How do you protect yourself from false charges?
- How do you deal with entrapment, i.e., an employee leads another on then yells sexual harassment?
- Asked of a male trainer: What right do you have to talk about this issue? Are you a sexual harasser?
- When does joking, flirting, teasing, hazing, and everyday behavior stop being OK and become sexual harassment?
- Why is an employer liable for the sexually harassing behavior of a manager if unaware of that behavior?
- Asked of a female trainer: Why should I listen to you, you just hate men?
- How can an employer be liable if his/her employee is sexually harassed by a non-employee?
- Is this the sex class? Where they teach you how?
- What is the difference between sexual harassment and sex discrimination?
- What is the legal basis for sexual harassment?
- I'd like to be sexually harassed!
- Why are we having this training?
- I've never seen it, so what's the problem?
- What are the legal trends?
- Can the sexual harasser be forced to pay punitive damages to the victim? Why? How?
- Isn't this just another here-today, gone-tomorrow feminist issue?
- Under what circumstances can an employee collect unemployment benefits?
- Under what circumstances can an employee collect workers' compensation?
- Can an employer be liable for sexual harassment situations involving their employees which occur after work hours?
- Why do we have to take down pin-up pictures?
- Why do we have to change our behavior just because a "girl" starts working here?
- Do you have to wait until you receive a sexual harassment complaint before you take action? If not, isn't that interfering in people's personal lives?
- Don't you think that women are oversensitive about this issue?
- If she lets some guys hug her and tell her jokes, why is my behavior sexual harassment?
- It's biological. Men are just being men when they see sexy women.
- If she tells sexual jokes, why is my behavior sexual harassment if I tell her sexual jokes?
- What shouldn't I ask a sexual harassment victim when she/he complains?
- What is the best way to deal with a sexual harassment complaint when it is one person's word against another's?
- How do you deal with a sexual harasser who won't take the situation seriously?
- Why is this issue, all of a sudden, being dealt with?
- A man says, "Now I'm afraid to say anything to women."
- With more women moving into management positions, will there be more cases of women sexually harassing men?
- Why is this issue so one-sided?
- Does this mean we can't have any more fun?
- What is the best way for a supervisor to talk about this issue with his/her employees?
- Is sexual harassment really a problem? Is it a problem in our workplace?
- How do you deal with a situation where a man sexually harasses a man? Woman to woman?
- What do you do if an employee who tells you

about being sexually harassed doesn't want you to do anything about her/his complaint?

- If she tells a black man to stop touching her and files a complaint against him when he won't stop, and the male gets disciplined because of his harassing behavior, does he have a valid race discrimination complaint against (1) the woman because she lets white guys touch her without claiming sexual harassment? (2) His supervisor?
- A woman says: "I don't understand what the problem is, I like men's attention," or, "Sure I dress sexy. Men love it."

It is imperative that the trainer knows how to respond in a non-defensive way to questions, statements and verbal attacks on them. The trainer gains or loses control and the groups' respect according to how he/she responds to questions and statements!

The major differences between the above model programs are that in the first program the participants will:

- have specific guidelines that tell them where the fine line between friendly and sexually harassing behavior is;
- talk more openly and seriously about the issue;
- recognize and change behavior that is, or may be, perceived as, sexual harassment;
- know how and when to take action to prevent or resolve sexual harassment situations.

Effective sexual harassment training programs are not panaceas for the unfair or sexist treatment of employees. They will encourage male and female employees to work together more effectively. This, in turn, has the impact of improving how everyone is treated and the overall quality of the work done.

The employer who has management personnel and employees who are ignorant about this sensitive issue are finding out that ignorance is not bliss, but is becoming very expensive.

Some Strategies To Aid In The Prevention And Elimination Of Sexual Harassment

Harassment probably will not be eliminated entirely but it can be reduced in frequency, intensity and duration by establishing an environment that exposes, discourages and censures harassment of all kinds. Intervention by persons in authority, whether government, employer, union, teachers, parents, etc., should discourage the harassing behavior and limit its social acceptability. It is critical that as many organizations and individuals as possible speak out against sexual harassment. Public attention should stimulate attitudinal changes, that result in less tolerance for sexual harassment and reduce its incidence and impact.

The problem of sexual harassment can be confronted on two primary levels: personal and societal. Personal strategies are those which women confronted with sexual harassment can pursue either to maintain personal power or to discourage potential harassment. Societal or organizational strategies discourage harassment within the employment, educational or other organizational contexts such as churches, advocacy, political, trade and professional, union or other settings.

This section discusses personal and organizational strategies that have proved successful in reducing the extent and severity of sexual harassment. It is not meant to be exhaustive, because new strategies can and should always be developed to fit a particular context. Further, because it is not always possible to prevent sexual harassment through either personal or organizational action, this section is included to stimulate the development of action plans to prevent sexual harassment in your community. This section on personal strategies is not meant to imply that we who experience sexual harassment are personally responsible for its occurrence but that all women should know what to consider and how to deal with a sexual harassment experience.

Personal Strategies

- When starting a new job or entering a new school (or changing any environment) find out what policies and procedures exist concerning the issue of sexual harassment or sex discrimination. Personnel policies can be found in company manuals, employee or student orientation packages, or employment contracts. If you belong to a union, ask the union for this information. Ask for this information when first hired or enrolled in school.
- Find out if sexual harassment is taken seriously as a problem by those in positions of authority within the organization. Use the formal or informal network to determine if the policy is supported by top management, if it is enforced fairly, who are the key individuals responsible for resolving problems of sexual harassment, if the organization has a history (pattern and practice) of unresolved complaints, etc. Keep your eyes and ears open, but do not participate in organizational gossip to your detriment.
- Encourage the organization to establish a policy and procedure if none exists.
- Prepare yourself for dealing with potential harassing conduct by role-playing or practicing with friends or in your head what you will say or do if a co-worker, boss, teacher, or others sexually harass you. "I'm not interested in dating you." "I prefer not to date individuals I work with." "NO!" "Please don't touch me, I don't like it." "If you persist in harassing me I will be forced to speak with the boss." If you would prefer to use

humor, make sure you are careful so that it does not backfire by implying that your refusal is not serious.

- Practice being assertive on the job, in school or other contexts.
- Be professional and businesslike, because it will have an impact on the people around you. Flirtatious behavior, acting coy, helpless, or participating in sexual innuendo may imply that you want sexual advances when in fact you do not. Further, it may result in a charge of sexual harassment against you, or may be used to argue that you invited or wanted sexual attention.
- Make sure that you pull your own weight on the job or in school, so you will not be viewed as helpless and will gain respect and acceptance from coworkers or school associates. This is particulary important in the non-traditional occupations such as law enforcement, or blue-collar jobs.
- Do not ask for special favors from others in a manner which implies that you are willing to reciprocate with sexual favors.
- Some persons advocate that mentioning a (large, jealous) boyfriend, lover, husband from time to time will deter harassment, even if you have to invent such a person. However, the direct approach is more successful in the long run and does not subject you to the risk of lowered personal credibility (because you lied) or the risk of being viewed as not able to take care of yourself.
- If you are asked to go off-site or to meet after work or school, etc. for a "business" purpose, make sure it is a legitimate request. If you are not sure that the primary purpose is business-related, ask.
- Remember that if you choose to socialize with clients, co-workers or persons within authority over you these situations may negatively impact the job or school environment. Be careful that your willingness to socialize does not imply willingness to enter into a more personal or intimate relationship, if that is not your intent. Make sure that there is no expectation that you will provide sexual favors in order to make a sale, gain a client, secure a promotion or a better grade.

Societal Strategies

- Organizations without specific legal mandates to address sexual harassment can still play a major role in the prevention of harassment by affirmatively raising the subject and developing community action plans or plans to deal with sexual harassment within their own organization.
- Advocacy organizations, unions, and other organized groups can be instrumental in insisting that employers comply with prevention mandates under federal and state law. Under California law, for example, (Government Code section 12940(j)) an employer must take all reasonable steps necessary to prevent discrimination and harassment from occurring. According to state and federal regulations such steps include:
  - affirmatively raising the subject
  - expressing strong disapproval
  - developing appropriate sanctions
  - informing employees of their right to raise and how to raise the issue of harassment
  - developing methods to sensitize all concerned

An employer who fails to take all reasonable steps necessary to prevent discrimination and harassment from occurring is subject to an unlawful employment practice charge (a change, under the FEHA) as well as other possible liabilities (e.g., under the doctrine of *respondeat superior* where the employer is held liable for the acts of its agents).

- Advocacy organizations can play a role in participate in community forums, speakou , self-help or crisis hotlines, press conferences, training programs, resource development, and complaint resolution.
- Advocacy organizations can ensure that their staff and volunteers are adequately trained to assist with the individual resolution of problems. They should have a thorough knowledge of local legal and psychosocial resources, and federal, state and local complaint agencies. They should be skilled in representation and mediation strategies to resolve individual and community problems.
- Documentation of the problem by survey, hearings, meetings or other means will publicize the issue of sexual harassment and build support for institutional policies and procedures.
- Financial contributions to local advocacy, research and other community organizations can help their efforts in the prevention and elimination of sexual harassment.
- Employers and unions may assist in the prevention of sexual harassment by:
  - development of a clear policy prohibiting sexual harassment;
  - establishment or modification of a complaint/grievance procedure that recognizes the special sensitivity of the issue of sexual harassment;
  - communication of the policy and procedure through memos, posters, flyers, inclusion in management manuals, posting on bulletin boards, etc;
  - making known, in a firm manner, management's attitude about sexual misconduct;
  - development of an employee/faculty code of conduct;

- development of pamphlets advising parties of their rights and responsibilities, including advice on how to handle and avoid sexual harassment, and the nature and legal implications of sexual harassment;
- inclusion of materials on sexual harassment in orientation programs and job-steward training;
- management training sessions and discussion of the policy in staff meetings;
- surveys to determine problem areas and the extent of harassment, the results of which are printed and distributed as another educational tool;
- establishment of a sound investigative procedure to be utilized by skilled investigators;
- establishment of procedures to protect the victim from retaliation;
- establishment of counseling services for victims and perpetrators;
- establishment of a clear disciplinary agenda giving consideration to the seriousness of the offense, the pattern and practice of the harassing conduct, the length of service, and the harasser's job performance;
- insuring that the offender is dealt with in a productive manner so that he is aware of the implications of the harassing conduct, your expectations for future job performance, and the fact that continued harassment will result in dismissal;
- utilizing outside consultants where it is not possible to provide the victim with a fair investigation and resolution of the complaint through the use of internal resources;
- seeking legal counsel concerning organizational responsibility to deal with sexual harassment;
- assigning responsibility for cases of harassment to a high-level person who has the respect and ear of senior management and credibility in the organization;
- fostering strong peer relationships among women employees to encourage informal support networks;
- encouraging harassed persons to confront harassers by letter, following a confidential consultation with an appropriate staff member;
- clearly and fairly enforcing the organizational policy and following the prescribed procedure.

Using The Media

Know the Media in Your Community

Newspapers, radio and television stations are businesses for which air time and space are money; both are limited. Evaluate what you read, see, and hear to determine which station, which program, which reporter or columnist, or which format is most likely to be receptive to you.

Compile a list of media contacts. Make notes about which outlets used your material and how. Know the difference between newspaper editors and reporters; between managers, program directors, news directors, reporters, and public service directors—and learn the appropriate times to contact each.

Do not hesitate to ask questions about deadlines and preferred formats. Once you have this information, never forget it. Information that is properly formatted and delivered in plenty of time is more likely to be used. It also creates a good image. A weekly newspaper that is published on Wednesday should never be contacted on Tuesday, especially if you can wait until Thursday. Radio and television stations should be contacted in the morning whenever possible; expect short shrift if you call a TV newsroom during the later afternoon rush to put together the 5 p.m. news.

Know How to Package Your Information

Just as with complaint documentation, the basics of a new story are who, what, where, when, and why. If you cover those points, you have given most news outlets what they need to know. It is preferable to keep your press releases short and to the point; if a reporter needs more information, you'll be called.

Since time is money, a three-page, single-spaced press release is more likely to be thrown away than edited. If you write the most important information first, it makes it easier for a newspaper or station to shorten your material without extensive rewriting or dropping something critical.

Public service announcements also need to be written properly. Seek the advice of a radio or television station's public service director. Rember that public service time is limited, and that to compete with the hundreds of other PSA's a station receives—to say nothing of the regular commercials—your copy should be easy to read, clear, and snappy.

Know Your Role

If you are being interviewed, keep your answers pointed and brief. If a reporter needs more information, he or she will ask for it. Collect your thoughts before you answer a question, and try to make your response as brief as you can. Do not be afraid to say "I don't know." A rambling made-up answer is obvious; a straightforward admission of ignorance allows the reporter to move on to other questions. Keep

your answers general and non-technical, unless such information is specifically requested. A print reporter is more likely to have time for detailed explanations than one from the electronic media.

When you talk to anyone from the media, establish from the outset whether your remarks are on or off the record. If you want to say something but do not want to be quoted, make that clear.

Never fail to return a reporter's call, particularly if he or she is on deadline. Call even if only to say that you can not talk or do not have the information requested.

A good working relationship with the media takes time to develop, and it begins with courtesy and politeness. It is a reciprocal relationship—if you have an important story, you help a reporter do his or her job. If they tell your story, you are reaching your community in a very effective way.

Working With Men to Overcome Sexual Harassment

Overview

This section addresses educating and counseling an individual harasser, educating men, and what men can do. The focus is on stopping sexual harassment; however, sexual harassment cannot be stopped without facing the far broader issue of male/female inequality in our society. Men who work to overcome sexual harassment and violence must face not only the particular forms of abuse, but the broader context in their own lives and in their culture.

Beyond legal recourse and extra-legal confrontation, it is possible to work with the harasser directly to stop the harassment and change his attitudes. This work can be short-term, informal, and educational, or it may include long-term counseling. Women or men who are, or expect to be, in an ongoing personal relationship with the harasser may choose this general option. But for the victim of harassment, working to change the harasser must be an option she chooses freely, if at all. For the victim, as well as for other women or men, the decision to work with a harasser must be made from a standpoint of independence and strength.

Short-term Informal Education

Various actions with different levels of severity are considered sexual harassment; likewise men harass women at various levels of intensity, abusiveness and awareness. Sometimes a direct "no" is enough to stop the harassment; sometimes several women or men in a work place can influence a man and hold him accountable for what he does. But the first condition of any work with a harasser is that he stop his harassment. He must be told clearly what is abusive and must be expected to stop it. If he will not stop, there is no purpose in going further with this option.

The harasser may not be aware of the abuse, simply deny it, minimize what he is doing, feel guilty at once, feel defensive, or attacked for doing what he has been taught throughout his life is normal male behavior, or blame the victim. These are predictable responses. But as long as he admits concern or at least partial responsibility, these responses can be talked through and confronted in a context of support for him. It is important to refuse to accept any of the above responses as final.

Long-term Counseling

Long-term, formal counseling is an option for any man who harasses and a necessity for men more deeply involved with harassment. Co-workers and friends cannot provide this. Unfortunately, there are not many resources for a man who wants to stop his abuse through counseling; available counseling focuses on individual problem-solving, rather than on the causes of sexual harassment in a social context. Such counseling may not be a useful option to pursue.

A supportive environment for long-term work is the peer group—either a men's consciousness-raising group or a therapy group. Men learn abusive behavior in groups from other men. Unlearning this behavior with other men may be a powerful experience. To find groups in your area, consult local rape, domestic violence, or child-assault centers staffed by women; in most of these centers there are women and men who may be available to talk to a harasser or refer him to a group. There is also a statewide network of men's groups, Men's Alternatives to Violence, which may have member groups in your region. Men in these groups are at different stages of progress and awareness in dealing with sexual harassment, but they are committed to being women's allies and may be able to help. Write MATV, P.O. Box 367, Arcata, CA 95521.

There are important issues with which any such group should deal. Cessation of the harassment is the first goal. Beyond that, and the issues listed above for short-term education, a group should be working on how a particular man learned the abusive role, how he was abused and pressured, how he is pressured now, and how he translates that into sexual harassment. The goal is for him to be able to take responsibility for his harassment and to change his behavior.

The above remarks have been directed to working with one man, the harasser. That is because users of this manual often are facing one man as the immediate danger. Stopping a harasser can eliminate the climate of harassment in an entire work place. But this requires much effort for an uncertain outcome. And the problem is not caused by one man, but masses of men raised to find harassment a normal and acceptable way to be men. The larger issue, then, is how to educate men.

Educating Men

Sexual harassment is so much a normal part of men's culture, men's bonding to other men, men's perceived privilege, men's relationship to women that many men are confused that the issue comes up at all. Part of the traditional rationale for the harassment is that it is natural male behavior (implying that it is biological); that men must act this way to be men; that it is neutral, and not aggressive, ("I was just teasing," "Can't you take a joke?"); and that women want, need, like or encourage it. Educating men means countering these myths with the reality of the effects of sexual harassment on women. This should not be women's work. Every work place, neighborhood, social group, school and other institution needs to consider what steps to take to make the environment safer for women.

Many men need only information and models of non-aggressive behavior to become allies of women. However, many others need confrontations, lawsuits, etc., because the habits and attitudes are so ingrained that some men choose not to acknowledge and take responsibility for their actions. Whatever their intent, what is important is the *impact* of their actions on others.

All men need to learn more about sexual harassment. An educational approach can be effective, especially when it is combined with confrontations, lawsuits and other actions.

Educating men is difficult, frustrating work and should be taken on only with adequate support, resources, goals and strategies. The following are some guidelines:

Locate Your Allies

Work with other women. Meet to share experiences, locate problem situations and problem men, and to share strategies. Locate support (and lack of support) within the structure. Management, boards of directors, union officials, religious leaders, etc. may be powerful allies (or they may be part of the problem). Find male allies. There are usually men around who are at least tacitly supportive of changing the environment. Many men, if given a choice, would prefer equitable working relationships with women. These men can be important allies.

Locate Your Resources

Check with local women's groups, rape crisis centers, battered women's shelters, etc., for possible workshop facilitators and other resources. Check among your allies for previous experience in educating men and check out their strategies and successes. Check policy statements, organizational bylaws, and state laws for guidelines.

Fix Your Goals

Goals might include: changing the specific standards of acceptable male behavior in your environment to ones based on respect, equality and safety; creating a strong women's group to confront men in harassing situations and for support; changing attitudes on the part of the man or men involved; creating progressive policies, standards and procedures for dealing with situations of harassment; and, holding men accountable for a harassment-free environment.

Plan A Strategy

This might include specific tactics such as: a series of workshops on the nature of sexual harassment; an *ad hoc* or permanent committee to monitor the environment and respond to specific complaints; a series of educational "demonstrations" using present instances of harassment to confront and educate male staff; drawing up and/or distributing clear guidelines on acceptable behavior; shop steward, management, religious leader or board training; soliciting individual or group male allies to educate particular men; creating a support group for women and/or training in self-defense, assertiveness, legal rights, etc., so that women can confront male actions directly; and creating an ongoing committee to deal with issues of harassment and safety relating to sex, race, sexuality, age and physical ability. (This would engage men as allies to look at all areas of harassment, including harassment of men.)

What Men Can Do

There are at least five reasons why it is in a man's interest to fight against sexual harassment.

1. Sexual harassment sabotages men's relationships with women by introducing fear, discomfort, pressure, intimidation and abuse. This is true even if an individual man is not doing the harassing.
2. It divides men from women, robbing each of support and solidarity needed at work and in relationships.
3. It divides men from other men. Men end up competing and relating to one another through women.
4. Male harassment gets directed at men as well, in such forms as teasing, name calling, competitiveness, fighting and sexual abuse.
5. Whether older or younger, Hispanic, gay, Black, poor, recent immigrant, etc., men feel the negative effects of sexual harassment on our environment. In an environment where any kind of harassment is tolerated, many more kinds are likely to be acted out.

Making the environment safer, more respectful of difference, more open and supportive is of benefit to all of us. For those of us wanting to be more involved

in the struggle to end sexual harassment here are some ways to begin:

1. Read, listen, observe. Find out more about women's lives, women's culture, the role of women in our society and, the vulnerabilities and strengths of women belonging to particular groups. How are their rights to be safe, to feel strong, to control their own bodies, to make their own decisions compromised?
2. Talk with other men about how you were trained to be men, to be sexually aggressive. How have you resisted?
3. Talk with other men about men's lives. How has it been hard to have to "act like a man" all the time?
4. Gently confront other men concerning behavior that seems abusive, including jokes, teasing and touching that are not respectful.
5. If there are specific harassers in your environment, strategize with others about how to educate or confront them.
6. Look at the environments you are a part of to see what needs to be changed or challenged.
7. Help organize other men to change situations that make women less powerful than men, such as unequal pay scales, lack of childcare, unsafe working conditions or transportation options, inadequate health care, domestic violence, street harassment, etc. You can contact local groups dealing with these issues to find out what men can do.

EPILOGUE

Now that you have read the manual and you have the power of information to assist you, you are in a position to make an informed decision about how to help yourself to deal effectively with sexual harassment. Do not give up. Be patient and calm. Take good care of your mental, emotional and physical health. Decide what you want and need and how you want to resolve your situation. Be creative. Decide on a plan and make it happen. You *can* make it happen. Go for it. And, good luck.

SELECTED NATIONAL, STATE AND LOCAL RESOURCES AND SERVICES PROVIDED

American Civil Liberties Union of No. California
1663 Mission Street, Suite 460
San Francisco, CA 94103
(415) 621-2488

Services provided: Advice and referrals by phone; impact litigation concerning civil liberties, limited to constitutional issues (no individual or service-type cases); free and low-cost literature; lobbying; regional and Gay Rights Chapters; Speakers Bureau; ACLU News.

American Civil Liberties Union of So. California
633 South Shatto Place
Los Angeles, CA 90005
(213) 487-1720

Services provided: Worker's Rights.

California Dept. of Fair Employment and Housing
1201 I Street, Suite 214
Sacramento, CA 95814
(916) 445-9918
(213) 620-2610

Services provided: information on sexual harassment in employment.

California Women Lawyers
926 J Street, Suite 714
Sacramento, CA 95814
(916) 441-3703

Services provided: referral to attorneys around the State who handle sexual harassment or related matters.

Center Against Sexual Harassment A Project of the Women's Legal Clinic
11544 W. Pico Blvd.
Los Angeles, CA 90064
(213) 478-0202

Services provided: consultations with attorneys and employment discrimination workshops and publications.

Center for Women In Government
1400 Washington Avenue
Draper Hall
Albany, New York 12222
(518) 455-6211

Services provided: Training, primarily public sector, policy development, managing incidents.

Know Your Rights Pamphlets—four booklets to guide women who need to know their legal rights in a sexual harassment situation.

General Resource Materials—reprints of Working Women's Institute Publications and of articles from popular magazines and academic, business and legal journals.

Self-Help Packet—a packet of materials giving women information on how to detect and cope with sexual harassment, how to get unemployment compensation or file a complaint (available in Spanish).

Coalition for Women in State Service
P.O. Box 493
Sacramento, CA 95803

Services provided: deals with issues affecting women in State employment.

Coalition of Labor Union Women
1225 8th Street, Suite 210
Sacramento, CA 95814

Services provided: information on workplace harassment.

Committee Against Sexual Harassment (CASH)
P.O. Box 2462
Fair Oaks, CA 95628-2462

Services provided: 24 hour information line (916) 962-1800; speakers.

Defense Advisory Committee on Women in the Services (DACOWITS)
Pentagon, Room 3D769
OASD (MRA & L)
Washington, D.C. 20301
(202) 697-2122

Services provided: advises the Secretary of Defense on issues of concern to women in the military.

Equal Employment Opportunity Commission
2401 E St., NW, 5th Floor
Washington, D.C. 20506
(202) 634-6700

Services provided: enforces Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of sex, color, or national origin. Also has authority to enforce other laws such as the Equal Pay Act of 1963.

Federal Women's Program Division
Office of Personnel Management
1900 E St., NW, Room 7H17
Washington, D.C. 20415
(202) 632-7082

Services provided: attempts to advance and enhance employment of women, including minority women.

Fifty States Project
Office of Public Liaison

Old Executive Office Bldg., Room 436
Washington, D.C. 20500
(202) 456-7896

Services provided: assist state governments in identifying and correcting legislation and statutes which discriminate against women.

Inter-American Commission of Women

Organization of American States
General Secretariat
17th and Constitution Ave., NW
Washington, D.C. 20006
(202) 789-6084

Services provided: serves as an intergovernmental agency which seeks to improve the status of women in OAS member countries.

Men's Alternatives to Violence (MATV)

P.O. Box 367
Arcata, CA 95521

National Advisory Council on Women's Educational Programs

425 13th St., NW, Suite 416
Washington, D.C. 20004
(202) 376-1038

Services provided: advises the President, Congress and federal education officials regarding the Women's Educational Equity Act Program and other federal policies and programs affecting women's education.

National Center for the Prevention and Control of Rape

National Institute of Mental Health
Parkland Bldg.
DHHS, 5600 Fishers Ln., Rm. 6C-12
Bethesda, MD
(301) 443-1910

Services provided: information on workplace rape; funds research in the area of rape.

National Network of Hispanic Women

P.O. Box 4223
Stanford University
Stanford, CA 94305
(415) 497-0412

Services provided: programs and publications.

National Women's Health Network

224 Seventh Street
Washington, D.C. 20003
(202) 543-9222

Services provided: humane health care for all women; reproductive health, occupational safety, and environmental health concerns.

National Women's Studies Association

University of Maryland
College Park, Maryland 20742
(301) 454-3757

Services provided: feminist education and women's studies.

New York Women Against Rape

New York, New York
(212) 777-4000

Services provided: counseling and advocacy (for a sexual harassment problem) New York Metropolitan Area only.

Office for Civil Rights

Department of Education
Switzer Bldg., Room 5000
400 Maryland Ave., SW
Washington, D.C. 20202
(202) 245-7680

Services provided: enforces civil rights statutes including Title IX of the Education Amendments of 1972, which prohibits sex discrimination in educational programs receiving federal aid.

Office of Federal Contract Compliance Program

Department of Labor, Employment Standards Administration
Washington, D.C. 20210
(202) 523-9475

Services provided: enforces the laws that forbid federal contractors to discriminate on the basis of sex, and maintains affirmative action programs in hiring, promotion and transfers.

9 to 5 L.A. Working Women

416 West 8th Street, Suite 807
Los Angeles, CA 90014
(213) 627-6263

Services provided: Employment-On the job problems/legal rights; advice and referrrals for office workers.

San Bernardino Sexual Assault Service

1875 North "D" Street
San Bernardino, CA 92405
(714) 882-5291

Services provided: limited to San Bernardino County.

San Diego 9 to 5

1033 Cudahy Place
San Diego, CA 92111
(619) 284-6911

San Francisco 9 to 5

c/o YWCA
620 Sutter Street
San Francisco, CA 94102
(415) 928-4522

Ventura 9 to 5

c/o 665 Helena Court
Ventura, CA 93003
(805) 642-1554

Dr. George E. Biles, Sexual Harassment Task Force

Kogod College of Business Administration
The American University
Washington, D.C. 20016
(202) 885-1915

Services provided: does not provide information on sexual harassment.

Sexual Harassment Task Force

Women's Studies Program
California State University, Sacramento
6000 J Street
Sacramento, CA 95814
(916) 454-6817
(916) 454-6191

Services provided: support and information.

State Coalition Against Sexual Harassment

Office of the Student Advocate
318 Eshleman Hall
University of California, Berkeley
Berkeley, CA 94704
(415) 642-6912

Services provided: university grievances.

State Women's Program

801 Capitol Mall
Sacramento, CA 95814
(916) 323-0722
TDD 473-0499
ATSS 473-0722

Services provided: consultation in matters relating to sexual harassment.

Women's Educational Equity Act Program

Department of Education
400 Maryland Avenue, S.W., Room 2031
Washington, D.C. 20202
(202) 245-2181

Services provided: WEEA gives grants and contracts to non-profit organizations for the purpose of developing model programs and products which enhance educational equity.

Women Employed

5 South Wabash, Suite 415
Chicago, IL 60603
(312) 782-3902

Women For: (Marilyn Kizziah, Coordinator)

8913 West Olympic Boulevard
Beverly Hills, CA 90211
(213) 657-7411

Services provided: referrals; candidate and issue information.

Women U.S.A.

76 Beaver Street
New York, NY 10005
(212) 422-1492

Services provided: referral service.

Women's Bureau

Department of Labor
200 Constitution Avenue, NW, Room 53002
Washington, D.C. 20510
(202) 523-6611

Services provided: works to improve the economic status of women by developing policies, standards, and program initiatives which enhance services for women in employment and training.

Women's Counseling Project

(212) 280-3063

Services provided: counseling and advocacy (for a sexual harassment problem) New York Metropolitan Area only.

Women Organized Against Sexual Harassment (WOASH) and the Bay Area Sexual Harassment Clinic

1370 Mission Street, Fourth Floor
San Francisco, CA 94103
(415) 621-7938

Services provided: information and education on sexual harassment; 24-hour hotline (Bay Area).

Women's Rights Law Reporter

Rutgers Law School
15 Washington Street
Newark, New Jersey 07102
(201) 648-5320

Services provided: legal brief bank—a listing of major sexual harassment cases and documents which can be purchased.

Working Women's Institute Against Sexual Harassment

593 Park Avenue
New York, NY 10021
(212) 838-4420

FILMS

"**Dr. Jennifer James on Sexual Harassment,**" Institute for Managerial and Professional Women, Portland, OR, 1980, 3/4 video, color, 45 minutes.

"**Effective Management Strategies: Preventing Sexual Harassment,**" Mary Belfry and Associates, 5231 Edina Industrial Blvd., Edina, MN 55435, 1982. (612) 830-0913. Video, 25 minutes.

"**It's Not Funny If It Hurts,**" California State Department of Education, Publications Sales, P.O. Box 271, Sacramento, CA 95802, (916) 445-1261. Can be purchased as part of the set with "Think About It, It Won't Go Away" for $20.00 plus applicable local sales tax.

Jample, Barbara. "**Women in Management: Threat or Opportunity,**" 1975 film, 30 minutes.

"**Preventing Sexual Harassment,**" BNA Communications, Inc., 9401 Decoverly Hall Road, Rockville, Maryland 20850, (301) 948-0540, 1980. Film, video, 25 minutes.

"**Sexual Harassment,**" WCCO-TV, 50 S. Ninth St., Minneapolis, MN 55402, (612) 330-2400, 1981, video.

"**Sexual Harassment-That's Not In My Job Description,**" American Media Inc., 5911 Meredith Dr., Des Moines, IO 50324, (515) 278-1078, 1981. Film, video, 20 minutes.

"**Shades of Gray,**" Universal Education and Visual Arts (UEVA), Box A, 100 Universal City Plaza, Universal City, CA 91608, 1983. 16mm film, video, 30 min. (213) 508-4296.

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"**The Power Pinch: Sexual Harassment in the Workplace,**" MTI Teleprograms, Inc., 3710 Commercial Ave., Northbrook, IL 60062 (800) 323-5343, 1981. Films, video, 26 mins.

"**The Workplace Hustle,**" MTI Teleprograms, Inc., 3710 Commercial Ave., Northbrook, IL 60062, (312) 291-9400, 1980. Film, video, 30 minutes. Clark Communications, San Francisco, CA.

"**Think About It, It Won't Go Away,**" California State Department of Education, Publications Sales, P.O. Box 271, Sacramento, CA 95802, (916) 445-1261. Can be purchased as part of the set with "It's Not Funny If It Hurts" for $20.00 plus applicable local sales tax.

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APPENDICES

PLEASE NOTE THAT ALL INFORMATION CONTAINED ON THE SAMPLE COMPLAINT FORMS REFERENCING PERSONS IS FICTIONAL AND IS NOT INTENDED TO PORTRAY REAL INDIVIDUALS OR INSTITUTIONS. ANY RESEMBLANCE TO REAL PERSONS OR INSTITUTIONS IS PURELY COINCIDENTAL.

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Appendix A

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Appendix B

PERSONAL AFFIDAVIT

STATE OF CALIFORNIA

COUNTY OF Sacramento

AFFIDAVIT OF Susan B. Anthony

ADDRESS 926 J. Street, Sacramento, CA

TAKEN AT 123450 J. Street, Sacramento, CA

I, Susan B. Anthony, voluntarily give this affidavit to Ima Investigator, who is known to me as an investigator of the State of California. I declare that On January 1, 1984, my supervisor, J. Jones, offered to write me a good evaluation if I submitted to his sexual demands. I refused and later found out that he wrote me a poor evaluation. I was subsequently denied a promotion.

I complained to the director, David Dodd, about my supervisor's actions. He ignored my complaints and said one of my co-workers was more qualified for the promotion. This man had been working at the company for only three months, compared to my 16 months, and was clearly unqualified for the higher position.

During the months after I complained to the director, I was given less and less responsibility in my job assignments. I felt that this had to do with my refusals to cooperate with my supervisor's later sexual harassment. I had to leave (constructive discharge) because I could no longer work productively in this hostile environment.

In particular, I had spells of spontaneous crying, sleepless nights, headaches, diahhrea and nausea, uncontrolled anger, and feelings of extreme fatigue. I informed my friend, E. Candi Stanton, of my experience and my reactions to it. I also notified my doctor who prescribed tranquilizers and ordered me to quit the job before I suffered more severe illness.

I left the job on December 20, 1984.

I have read the foregoing affidavit and, under penalty of perjury, certify that it is true and correct to the best of my knowledge.

Witnessed by:

Ima Investigator
Investigator

Ima Investigator
Print Full Name

SIGNED Susan B. Anthony DATE 1/5/85

Susan B. Anthony
Print Full Name

Page No. 1 of a 1 page Affidavit

Appendix C

PERSONAL DECLARATION

STATE OF CALIFORNIA

COUNTY OF Sacramento, CA

DECLARATION OF E. Candi Stanton

ADDRESS P. O. Box 4A, Sacramento, CA

TAKEN AT Sacramento, CA 123450 J. St.

I, E. Candi Stanton, voluntarily give this declaration to Ima Lawyer, who is known to me as the attorney for Susan B. Anthony I declare that On numerous occasions during the entire year of 1984, Susan B. Anthony talked to me about the problems she was having with her supervisor J. Jones because of his repeated requests for sexual favors. She also told me that in spite of telling the director of the company about the problem the company did nothing to alleviate her concerns. Susan has been very sick since this harassment and retaliation first started. She has often complained of headaches, nausea, insomnia, and diahhrea. She has become unexpectedly angry with me and other friends which is not like her. This has been for no apparent reason other than the stress of her work situation and when she realizes that it has happened she immediately is remorseful.

I have known Susan for approximately 20 years. During that time (until this work harassment, she has been a kind, stable, patient, and loving friend who has always been able to endure the most difficult of situations. However, I have seen her emotional behavior and reactions to her friends, including myself change dramatically over recent months. We have talked often about these changes and Susan always tells me of the changes in relation to her problems on the job.

I have read the foregoing declaration and, under penalty of perjury, certify that it is true and correct to the best of my knowledge.

Elizabeth C. Stanton
PRINT FULL NAME

SIGNED E. Candi Stanton DATE 2/14/8[illegible]

Page No. 1 of a 1 page declaration.

Appendix D

74676 Federal Register Vol. 45, No. 219
Monday, November 10, 1980
Rules and Regulations

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1604

Discrimination Because of Sex Under Title VII of the Civil Rights Act of 1964, as Amended; Adoption of Final Interpretive Guidelines

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final Amendment to Guidelines on Discrimination Because of Sex.

SUMMARY: On April 11, 1980, the Equal Employment Opportunity Commission published the Interim Guidelines on sexual harassment as an amendment to the Guidelines on Discrimination Because of Sex, 29 CFR Part 1604.11, 45 FR 25024. This amendment will re-affirm that sexual harassment is an unlawful employment practice. The EEOC received public comments for 60 days subsequent to the date of publication of the Interim Guidelines. As a result of the comments and the analysis of them, these Final Guidelines were drafted.

EFFECTIVE DATE: November 10, 1980

FOR FURTHER INFORMATION CONTACT:

Karen Danart, Acting Director, Office of Policy Implementation, Equal Employment Opportunity Commission, 2401 E Street, NW, Washington, D.C. 20506 (202) 634-7060.

SUPPLEMENTARY INFORMATION: During the 60-day public comment period which ended on June 10, 1980, the Commission received over 160 letters regarding the Guidelines on sexual harassment. These comments came from all sectors of the public, including employers, private individuals, women's groups, and local, state, and federal government agencies.

The greatest number of comments, including many from employers, were those commending the Commission for publishing guidelines on the issue of sexual harassment, as well as for the content of the guidelines.

The second highest number of comments specifically referred to § 1604.11(c) which defines employer liability with respect to acts of supervisors and agents. Many commentors, especially employers, expressed the view that the liability of employers under this section is too broad and unsupported by case law. However, the strict liability imposed in § 1604.11(c) is in keeping with the general standard of employer liability with respect to agents and supervisory employees. Similarly, the Commission and the courts have held for years that an employer is liable if a supervisor or an agent violates the Title VII, regardless of knowledge or any other mitigating factor. *Anderson* v. *Methodist Evangelical Hospital, Inc.*, ——— *F.Supp.* ———, *3 EPD* [illegible] *(D.C. Ky. 1971), aff'd* 464 F.2d 723, 4 EPD ¶7901 (8th Cir. 1972); Commission Decision No. 71-909, CCH EEOC Decisions (1973) ¶6193; Commission Decision No. 71-1442, CCH EEOC Decisions (1973) ¶6216. Furthermore, a recent 9th Circuit case on sexual harassment imposed strict liability on the employer where a supervisor harassed an employee without the knowledge of the employer. *Miller* v. *Bank of America*, 600 F.2d 211, 20 EPD ¶30,088 (9th Cir. 1979). In keeping with this standard, the Commission, after full consideration of the comments and the accompanying concerns, will let § 1604.11(c) stand as it is now worded.

A number of people asked the Commission to clarify the use of the term "agent" in § 1604.11(c). "Agent" is used in the same way here as it is used in § 701(b) of Title VII where "agent" is included in the definition of "employer."

A large number of comments referred to § 1604.11(a) in which the Commission defines sexual harassment. These comments generally suggested that the section is too vague and needs more clarification. More specifically, the comments referred to subsection (3) of § 1604.11(a) as presenting the most troublesome definition of what constitutes sexual harassment. The Commission has considered these comments and has decided that subsection (3) is a necessary part of the definition of sexual harassment. The courts have found sexual harassment both in cases where there is concrete economic detriment to the plaintiff, *Heelan* v. *Johns-Manville Corp.*, 451 F.Supp. 1382, 16 EPD ¶8330 (D. Colo. 1978), *Barnes* v. *Costle*, 561 F.2d 983, 14 EPD ¶7755 (D.C. Cir. 1977), *Garber* v. *Saxon Business Products*, 552 F.2d 1032, 14 EPD ¶7587 (4th Cir. 1977), and where unlawful conduct results in creating an unproductive or an offensive working atmosphere. *Kyriazi* v. *Western Electric Co.*, 461 F.Supp. 894, 18 EPD ¶8700 (D.N.J. 1978). For analogous cases with respect to racial harassment see *Rogers* v. *EEOC*, 454 F.2d 234, 4 EPD ¶7597 (5th Cir. 1971); *EEOC* v. *Murphy Motor Freight Lines, Inc.*, 488 F.Supp. 381, 22 EPD ¶30,888 (D.C. Mn. 1980).

The word "substantially" in § 1604.11(a)(3) has been changed to "unreasonably." Many commentors raised questions as to the meaning of the word "substantially." The word "unreasonably" more accurately states the intent of the Commission and was therefore substituted to clarify that intent.

It should be emphasized that the appropriate course for further clarification and guidance on the meaning of § 1604.11(a)(3) is through future Commission decisions which will deal with specific fact situations. Since sexual harassment allegations are reviewed on a case-by-case basis, any further questions will be answered through Commission decisions which will be fact specific.

A fair number of comments were received on § 1604.11(d) which defined employer liability with respect to acts of persons other than supervisors or agents. Again, as in § 1604.11(c), the traditional Title VII concept prevails regarding employer liability with respect to those people other than agents and supervisory employees. Many commentors asked the Commission to clarify the meaning of "others." As a result, § 1604.11(d) has been separated into two subsections. The new § 1604.11(d) refers to sexual harassment among fellow employees and the liability of an employer in such a situation.

The new § 1604.11(e) refers to the possible liability of employers for acts of non-employees towards employees. Such liability will be determined on a case-by-case basis, taking all facts into consideration, including whether the employer knew or should have known of the conduct, the extent of the employer's control and other legal responsibility with respect to such individuals.

A number of people also raised the question of what an "appropriate action" might be under § 1604.11(d). What is considered to be "appropriate" will be seen in the context of specific cases through Commission decisions.

Section 1604.11(e) of the Interim Guidelines, which sets out suggestions for programs to be developed by employers to prevent sexual harassment, now becomes § 1604.11 (f). The Commission has received many comments which state that this section is

not specific enough. The Commission has decided that the provisions of this section should illustrate several kinds of action which might be appropriate, depending on the employer's circumstances. The emphasis is on preventing sexual harassment, and § 1604.11(f) intends only to offer illustrative suggestions with respect to possible components of a prevention program. Since each workplace requires its own individualized program to prevent sexual harassment, the specific steps to be included in the program should be developed by each employer.

Several commentors raised the question of whether a third party who was denied an employment benefit would have a charge cognizable under Title VII where the benefit was received by a person who was granting sexual favors to their mutual supervisor. Even though the Commission does not consider this to be an issue of sexual harassment in the strict sense, the Commission does recognize it as a related issue which would be governed by general Title VII principles. Subsection (g) has been added to recognize this as a Title VII issue.

After carefully considering the numerous comments it received, the EEOC made the above changes to the Interim Guidelines and, at its meeting of September 23, 1980, adopted them as the Final Guidelines on sexual harassment, subject to formal interagency coordination. Formal interagency coordination has been completed, and none of the affected agencies had additional comments. Therefore, these Guidelines become final as adopted at the Commission meeting of September 23, 1980.

Signed at Washington, D.C., this 3rd day of November 1980.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

Accordingly, 29 CFR Chapter XIV, Part 1604 is amended by adding § 1604.11 to read as follows:

PART 1604—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

§ 1604.11. Sexual Harassment.

(a) Harassment on the basis of sex is a violation of Sec. 703 of Title VII.[1]
Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(c) Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual acts in either a supervisory or agency capacity.

[1] The principles involved here continue to apply to race, color, religion or national origin.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

(Title VII, Pub. L. 88-352, 78 Stats. 253 (42 U.S.C. 2000e et seq.))

(FR Doc. 80-34981 Filed 11-7-80; 8:45 a.m.)

BILLING CODE 6570-06-M

Appendix E

§ 12940 California Government Code

§ 12940. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the State of California:

. . . (i) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, to harass an employee or applicant. Harassment of an employee or applicant by an employee other than an agent or supervisor shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment. The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment. For purposes of this subdivision only, "employer" means any person regularly employing one or more persons, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision thereof, and cities. However, "employer" does not include a religious association or corporation not organized for private profit. For other types of discrimination as enumerated in subdivision (a), an employer remains as defined in subdivision (c) of Section 12926. Nothing contained in this subdivision shall be construed to apply the definition of employer found in this subdivision to subdivision (a).

(j) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occuring.
(Amended by Stats. 1981, c. 11, p. 24, § 1; Stats. 1981, c. 270, p. 1363, § 1; Stats. 1982, c. 1196, § 2; Stats. 1984, c. 1754, § 2.)

Note—Stats 1984 ch 1754 provides:

SECTION 1. The Legislature finds and declares that it is the existing policy of the State of California to prohibit harassment and discrimination in employment on the basis of any protected classification. Such conduct whether intentional or unintentional is a violation of the civil rights of California citizenry and has been shown to decrease productivity in the workforce. It is the existing policy of the State of California, as declared by the Legislature, that procedures be established by which allegations of prohibited harassment and discrimination may be filed, timely and efficiently investigated, and fairly adjudicated, and that agencies and employers be required to establish affirmative programs which include prompt and remedial internal procedures and monitoring so that worksites will be maintained free from prohibited harassment and discrimination by their agents, administrators, and supervisors as well as by their nonsupervisors and clientele. To further this intent, the Legislature enacts this act.

FAIR EMPLOYMENT AND HOUSING COMMISSION REGULATIONS CALIFORNIA ADMINISTRATIVE CODE

§ 7287.6. Terms, Conditions and Privileges of Employment.

(a) Fringe Benefits. (Reserved.)

(b) Harassment.

(1) Harassment includes but is not limited to:

(A) Verbal harassment, *e.g.*, epithets, derogatory comments or slurs on a basis enumerated in the Act;

(B) Physical harassment, *e.g.*, assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual on a basis enumerated in the Act;

(C) Visual forms of harassment, *e.g.*, derogatory posters, cartoons, or drawings on a basis enumerated in the Act; or

(D) Sexual favors, *e.g.*, unwanted sexual advances which condition an employment benefit upon an exchange of sexual favors. [See also Section 7291.1(f)(1).]

(E) In applying this subsection, the rights of free speech and association shall be accommodated consistently with the intent of this subsection.

(2) Harassment of an applicant or employee by an employer or other covered entity, its agents or supervisors is unlawful.

(3) Harassment of an applicant or employee by an employee other than those listed in subsection (b)(2) above is unlawful if the employer or other covered entity, its agents or supervisors knows of such conduct and fails to take immediate and appropriate corrective action. Proof of such knowledge may be direct or circumstantial. If the employer or other covered entity, its agents or supervisors did not know but should have known of the harassment, knowledge shall be imputed unless the employer or other covered entity can establish that it took reasonable steps to prevent harassment from occurring. Such steps may include affirmatively raising the subject of harassment, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under California law, and developing methods to sensitize all concerned.

(4) An employee who has been harassed on the job by a coemployee should inform the employer or other covered entity of the aggrievement; however, an employee's failure to give such notice is not an affirmative defense.

(f) Interpersonal Conduct and Appearance.

(1) Sexual Harassment. Sexual harassment is unlawful as defined in Section 7287.6(b), and includes verbal, physical, and visual harassment, as well as unwanted sexual advances.

Appendix F

California Education Code

§ 200. State policy; purpose

It is the policy of the State of California to afford all persons, regardless of their sex, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.

(Added by Stats. 1982, c. 1117, p.____, §1.)

§ 210. Educational institution

For purposes of this chapter, "educational institution" means a public or private preschool, elementary, or secondary school or institution; a public or private institution of vocational, professional or postsecondary education; the governing board of a school district; the governing board of a community college district; the Regents of the University of California; the Trustees of the California State University, or any combination of school districts or counties recognized as the administrative agency for public elementary or secondary schools.

(Added by Stats. 1982, c. 1117, p.____, § 1.)

§ 212.5. Sexual harassment

For purposes of this chapter, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

(a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.

(b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

(c) The conduct has the purpose or effect of having negative impact upon the individual's work or academic performance or of creating an intimidating, hostile, or offensive work or educational environment.

(d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

(Added by Stats. 1984, c. 1371, p.____, § 1.)

§ 213. State financial assistance

For purposes of this chapter, "state financial assistance" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance to any educational institution for its own benefit or for the benefit of any students admitted to the educational institution.

State financial assistance shall include, but not be limited to, all of the following:

(a) Grants of state property, or any interest therein.

(b) Provision of the services of state personnel.

(c) Funds provided by contract, tax rebate, appropriation, allocation, or formula.

(Added by Stats. 1982, c. 1117, p.____, § 1.)

§ 214. State student financial aid

For purposes of this chapter, "state student financial aid" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance directly to any student admitted to an educational institution. State student financial aid shall include, but not be limited to, scholarships, loans, grants, or wages.

(Added by Stats. 1982, c. 1117, p.____, § 1.)

§ 220. Extent of prohibition

No person shall be subjected to discrimination on the basis of sex in any program or activity conducted by an educational institution which receives or benefits from state financial assistance or enrolls students who receive state student financial aid.

(Added by Stats. 1982, c. 1117, p.____, § 1.)

§ 230. Particular practices prohibited

For purposes of this chapter, harassment and other discrimination on the basis of sex include, but are not limited to, the following practices:

(a) On the basis of sex, exclusion of a person or persons from participation in, denial or the benefits of, or subjection to harassment or other discrimination in any academic, extracurricular, research, occupational training, or other program or activity.

(b) On the basis of sex, provision of different amounts or types of student financial aid, limitation of eligibility for student financial aid, or the application of different criteria to applicants for student financial aid or for participation in the provision of student financial aid by others. Nothing in this subdivision shall be construed to prohibit an educational institution from administering, or assisting in the administration of, scholarships, fellowships, or other forms of student financial aid, established pursuant to domestic or foreign wills, bequests, trusts, or similar legal instruments or by acts of a foreign government, which require that awards be made to members of a particular sex; provided, that the overall effect of the award of these sex-restricted scholarships, fellowships, and other forms of student financial aid does not discriminate on the basis of sex.

(c) On the basis of sex, exclusion from participation in, or denial of equivalent opportunity in, athletic programs. For purposes of this subdivision, "equivalent" means equal or equal in effect.

(d) On the basis of sex, harassment or other discrimination among persons, including, but not limited to, students and nonstudents, or academic and nonacademic personnel, in employment and the conditions thereof, except as it relates to a bona fide occupational qualification.

(e) On the basis of sex, the application of any rule concerning the actual or potential parental, family, or a marital status of a person, or the exclusion of any person from any program or activity or employment because of pregnancy or related conditions.

(Added by Stats. 1982, c. 1117, p.____, § 1.: amended by Stats. 1984, c. 1371, p.____, § 1.)

§ 232. Rules, regulations, or orders

The State Board of Education, the Board of Governors of the California Community Colleges, and the Trustees of the California State University shall issue rules, regulations, or orders to implement the provisions of this chapter.

The Regents of the University of California may issue rules, regulations, or orders to implement the provisions of this chapter.

(Added by Stats. 1982, c. 1117, p.____, § 1.)

§ 250. Assurance of compliance; prerequisite to state financial assistance or student financial aid

Prior to receipt of any state financial assistance or state student financial aid, an educational institution shall provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the educational institution will be conducted in compliance with the provisions of this chapter and all other applicable provisions

of state law prohibiting discrimination on the basis of sex. A single assurance, not more than one page in length and signed by an appropriate responsible official of the educational institution, may be provided for all the programs and activities conducted by an educational institution.

(Added by Stats. 1982, c. 1117, p.____, §1.)

§ 251. Reports

A school district or a community college district shall submit timely, complete, and accurate compliance reports to the State Department of Education or to the chancellor's office, as those entities may require.

All reports submitted pursuant to this section shall be made available by the educational institution for public inspection during regular business hours.

(Added by Stats. 1982, c. 1117, p.____, § 1.)

§ 260. Responsibility for ensuring that district programs and activities are free from discrimination; monitoring compliance with rules and regulations

The governing board of school district shall have the responsibility for ensuring that district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability, and for monitoring compliance with any and all rules and regulations promulgated pursuant to Section 11138 of the Government Code.

(Added by Stats. 1982, c. 1117, p.____, §1.)

§ 261. Implementation pursuant to existing regulations and procedures

The provisions of this chapter shall be implemented pursuant to existing regulations and procedures promulgated pursuant to Section 11138 of the Government Code, governing the filing and handling of written complaints of prohibited discrimination.

(Added by Stats. 1982, c. 1117, p.____, § 1.)

§ 262. Primary responsibility for ensuring that district programs and activities are free from discrimination; review of complaints and reports; monitoring compliance

(a) The governing board of a community college district shall have the primary responsibility for ensuring that district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

(b) The Chancellor's office of the California Community Colleges shall have responsibility for all of the following:

(1) Reviewing original complaints of alleged unlawful discrimination filed pursuant to Section 59328 of Title 5 of the California Administrative Code.

(2) Reviewing reports of the nature and extent of the investigation of each complaint conducted by the district.

(3) Reviewing reports of any actions taken by the district to resolve each complaint.

(4) Monitoring the compliance of each district with any and all regulations promulgated pursuant to Section 11138 of the Government Code.

(Added by Stats. 1982, c. 1117, p.____, § 1.)

§ 264. Applicability to University of California

No provision of this chapter shall be applicable to the University of California unless the Regents of the University of California, by resolution, make the provisions applicable.

(Added by Stats. 1982, c. 1117, p.____, § 1.)

Appendix G

ATTORNEY'S NAME
Attorney at Law
Street Address
City, State
Telephone:

Attorney at Law

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SACRAMENTO

CLIENT'S NAME, Plaintiff,

vs.

DEFENDANT'S NAMES AND CAPACITIES, Defendants.

NO.

OUTLINE COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

_____/

Comes now plaintiff, CLIENT'S NAME, and alleges as follows:

FIRST CAUSE OF ACTION

(Assault or Assault and Battery)

1. A demonstration by defendant of an unlawful intent to inflict immediate injury on plaintiff;
2. That defendant had the apparent present ability to carry out his threat;
3. That plaintiff was put in fear of personal harm by the actions of defendant;
4. Injury to plaintiff;
5. Damages;
6. Basis for award of exemplary or punitive damages; and

IF ASSAULT AND BATTERY OCCURRED:

1. Willful and unlawful use of force or violence on plaintiff (offensive touching sufficient for civil battery);
2. Injury to plaintiff;
3. Damages;
4. Basis for award of exemplary or punitive damages; and
5. Plaintiff's right to exemplary and punitive damages.

SECOND CAUSE OF ACTION

(False Imprisonment)

1. Acts of defendant showing restraint of plaintiff against his or her will by force or threat of force;
2. Facts showing that defendant was without probable cause or good faith belief that he or she had justification for restraining plaintiff;
3. Damages; and
4. Plaintiff's right to exemplary and punitive damages.

THIRD CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

1. Special relationship between plaintiff and defendant;
2. Special susceptibility of plaintiff;
3. Defendant's outrageous conduct;
4. Defendant's intention of causing, or reckless disregard of the probability of causing, emotional distress to plaintiff;
5. Plaintiff suffers severe or extreme emotional distress;
6. Actual and proximate causation of the emotional distress by the defendant's outrageous conduct;
7. Continuing conduct or eminent threat of conduct (if injunctive relief desired);
8. Facts showing plaintiff's lack of an adequate remedy at law and that he or she will suffer great and irreparable injury (if injunctive relief desired);
9. Damages; and
10. Plaintiff's right to exemplary and punitive damages.

FOURTH CAUSE OF ACTION

(Negligent Infliction of Emotional Distress)

1. Defendant's legal duty to use due care with regard to plaintiff;
2. Breach of that duty;
3. Breach of the duty as proximate cause of resulting injuries; and
4. Damages.

FIFTH CAUSE OF ACTION

(Invasion of Privacy)

1. Allegation establishing a violation of plaintiff's right of privacy;
2. Proximate cause of injuries sustained by plaintiff;
3. Continuing conduct or eminent threat of conduct requiring injunctive relief;
4. Facts showing plaintiff's lack of an adequate remedy at law and that he or she will suffer great and irreparable injury;
5. Damages; and
6. Plaintiff's right to exemplary and punitive damages.

SIXTH CAUSE OF ACTION

(Defamation)

1. Defamatory language;
2. Publications;
3. Good reputation (optional except if alleging harm caused her in her business or professional capacity);
4. Falsity of allegations;
5. Innuendo: if defamatory language is susceptible of two meanings it is necessary to explain what was meant;
6. Inducement to speak, if any;
7. Damages; and
8. Plaintiff's right to exemplary and punitive damages.

SEVENTH CAUSE OF ACTION

(Breach of Contract including harassment, retaliation, and/or wrongful discharge)

1. The employment contract;
2. Plaintiff's performance or excuse for nonperformance;
3. Defendant's breach; and
4. The resulting damages to plaintiff.

EIGHTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

1. The employment contract;
2. The implied covenant of good faith and fair dealing;
3. Special relationship between the parties;
4. Plantiff's performance or excuse for nonperformance of the contract.
5. Defendant's breach of the implied covenant of good faith and fair dealing;
6. Resulting damages to plaintiff; and
7. Plantiff's right to exemplary and punitive damages.

NINTH CAUSE OF ACTION

(Quantum Meruit)

1. Plaintiff rendered work, labor and services at request of defendant and with expectation of pay;
2. Reasonable value of services rendered; and
3. Amount due and owing.

TENTH CAUSE OF ACTION

(Violation of California Fair Employment and Housing Act and Title VII of the 1964 Civil Rights Act, as amended)

1. Facts showing that defendant is subject to the Fair Employment and Housing Act/Title VII;
2. Facts showing the nature of the defendant's wrongful conduct;
3. Facts showing plaintiff's compliance with jurisdictional requirements;
4. Characteristic of plaintiff (i.e., sex, race...) which is protected;
5. Relationship between defendant's wrongful conduct and plaintiff's characteristic (e.g., plaintiff would not have been harassed "but for" her sex)
6. Continuing nature of defendants' wrongful conduct (if injunctive relief desired);
7. Facts showing plaintiff's lack of an adequate remedy at law (if injunctive relief desired) and that he or she will suffer great and irreparable injury;
8. Damages which plaintiff has incurred; and
9. Plaintiff's right to exemplary and punitive damages.

ELEVENTH CAUSE OF ACTION

(Fraud)
(Intentional Misrepresentation)

1. Defendant's misrepresentation with intent to induce plaintiff's reliance;
2. Defendant's knowledge that representations made to plaintiff were false;
3. Plaintiff was in fact induced to act in specified manner;
4. Special relationship between the parties;
5. Resulting damage to plaintiff; and
6. Plaintiff's right to exemplary and punitive damages.

TWELVTH CAUSE OF ACTION

(Neglect Misrepresentation)

1. Defendant's misrepresentation with intent to induce plaintiff's reliance;
2. Defendant made representations with no reasonable ground for believing them to be true, knowing there was insufficient information to make representations;
3. Plantiff was in fact induced to act in specified manner;
4. Defendant owed plaintiff a duty to supply accurate information (special relationship);
5. Resulting damages to plaintiff; and
6. Plaintiff's right to exemplary and punitive damages.

THE ABOVE SET FORTH CAUSES OF ACTION MAY OR MAY NOT BE APPLICABLE IN A PARTICULAR CASE OF HARASSMENT. BY NO MEANS IS THIS SAMPLE COMPLAINT AN EXHAUSTIVE LIST OF POTENTIAL CAUSES OF ACTION. A THOROUGH ANALYSIS OF THE FACTS IS NECESSARY TO EFFECTIVE PLEADING. THE PURPOSE OF THIS OUTLINE IS ONLY TO GIVE YOU AN INDICATION OF THE SPECTRUM OF POTENTIAL REMEDIES FOR HARASSMENT.

COMPLAINT OF DISCRIMINATION IN EMPLOYMENT UNDER GOVERNMENT CONTRACTS

INSTRUCTIONS: Only complaints of discrimination in employment by companies working under Government contracts are filed on this form. The act of discrimination must be based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN, and the complaint must be filed within 180 days of the discriminatory act. Other types of discrimination are not handled by this office. Fill in the form, making one copy for yourself and one official copy. The official copy of the form must be typed or printed legibly and signed by you.

YOUR NAME	TELEPHONE NO.	SOCIAL SECURITY NO
Susan B. Anthony	916/001-4900	001-10-0111

STREET ADDRESS	CITY	STATE	ZIP CODE
926 J Street	Sacramento	CA	95814

MAIL THIS FORM TO:

U. S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE
~~WASHINGTON, D.C. 20210~~ Room 1453
450 Golden Gate AVE
SAN FRANCISCO, CA 94102

NAME, ADDRESS & ZIP CODE OF THE COMPANY INVOLVED
Acme Rocket Company
R.R. # 025
Sacramento, CA 95243

WHICH GOV. AGENCY ARE THEY WORKING FOR?
Department of Defense

GIVE THE EXACT DATE OF THIS DISCRIMINATION
January 1, 1984 through June 10, 1984

DISCRIMINATION FOR
- ☐ RACE OR COLOR
- ☐ RELIGION
- ☒ SEX
- ☐ NATIONAL ORIGIN

WHAT DID IT INVOLVE? *(Check only the most apparent factor)*
- ☐ HIRING
- ☒ PROMOTION
- ☐ DOWNGRADING
- ☐ LAYOFF OR RECALL
- ☐ TRANSFER
- ☒ JOB ASSIGNMENT
- ☐ EMPLOYEE BENEFITS
- ☐ WAGES
- ☐ SEGREGATED FACILITIES
- ☐ DISCHARGE
- ☐ TRAINING OR APPRENTICESHIP
- ☒ OTHER *(Explain below)* constructive dischar

THE COMPLAINT: *Tell the full story of this act of discrimination. Show all dates, places, and the names and titles of persons involved.*

I began my employ at Acme Rocket Company on September 17, 1982 working as an office clerk. In December 1983, I applied for a promotion to a supervisory position knowing that I had all the qualifications and had been given good reviews by my supervisor in the past.

On January 1, 1984, my supervisor, Jay Jones, offerred to write me a good evaluation if I submitted to his sexual demands. I refused and later found out that he wrote me a poor evaluation. I was subsequently denied a promotion.

I complained to the director, David Dodd, about my supervisor's actions. He ignored my complaints and said one of my co-workers was more qualified for the promotion. This gentleman had been working at the company for only three months and was clearly unqualified for the higher position.

During the months after I complained to the director, I was given less and less responsibility in my job assignments. I felt that this had to do with my refusals to cooperate with my supervisor's later sexual harassment. I was constructively discharged since I could not work effectively in this hostile environment

☒ *Continued on the other side.*

THE COMPLAINT (Continued from page one)

where I was clearly being discriminated against.

	Additional pages may be attached to this form. Please put your name and S.S. No. at the top of each page.
I certify that the information given above is true and correct to the best of my knowledge or belief. (A willful false statement is punishable by law U.S. Code, Title 18, Sec. 1001)	YOUR SIGNATURE: Susan B. Anthony / DATE: June 13, 1985

DO NOT WRITE BELOW THIS LINE

The complainant has reaffirmed this complaint in my presence.
This complaint is now the basis of an investigation under EXECUTIVE ORDER 11246 *and/or* EXECUTIVE ORDER 11375.

NAME OF INVESTIGATOR	TITLE	SIGNATURE
AGENCY OR DEPARTMENT CONDUCTING INVESTIGATION		DATE INVESTIGATION STARTED

Appendix I

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION OFFICES

You may be able to file a charge of sex discrimination at this agency. It is the enforcement agency for Title VII of the 1964 Civil Rights Act which prohibits discrimination based on race, religion, national origin, age and *sex*. It is a legal, administrative process and may serve as a remedy for sexual harassment in the workplace. You may have other remedies available to you. It is best to get practical information from a women's organization near you (there are also handbooks available from many of these organizations than can guide you if there is no support group near you). It is wise to also get legal information and advice to be sure you are aware of all the legal remedies that are available to you.

ALABAMA

BIRMINGHAM DISTRICT OFFICE
2121 Eight Avenue, North
Birmingham, Alabama 35203
(205) 254-1166

ARIZONA

PHOENIX DISTRICT OFFICE
201 North Central Avenue
Suite 1450
Phoenix, Arizona 85073
(602) 261-3882

ARKANSAS

LITTLE ROCK AREA OFFICE
Federal Building
750 West Capitol
Little Rock, Arkansas 72201
(501) 378-1901

CALIFORNIA

FRESNO AREA OFFICE
1313 P Street, Ste. 103
Fresno, California 93721
(209) 487-5794

LOS ANGELES DISTRICT OFFICE
3353 Wilshire Boulevard
9th Floor
Los Angeles, California 94810
(213) 635-3400

OAKLAND AREA OFFICE
George P. Miller Federal Building
1515 Clay Street
Oakland, California 94612
(415) 273-7579

SAN DIEGO AREA OFFICE
San Diego Federal Building
900 Front Street
San Diego, California 92101
(714) 293-5194

SAN FRANCISCO DISTRICT OFFICE
1390 Market Street
Suite 325
San Francisco, California 94102
(415) 556-8360

SAN JOSE AREA OFFICE
Crocker Plaza Building
84 West Santa Clara
San Jose, California 95113
(408) 275-7200

COLORADO

DENVER DISTRICT OFFICE
1513 Short Street
6th Floor
Denver, Colorado 50392
(303) 437-2771

FLORIDA

MIAMI DISTRICT OFFICE
DuPont Plaza Center
Suite 141
309 Biscayne Boulevard Way
Miami, Florida 33131
(305) 350-4491

TAMPA AREA OFFICE
760 Twiggs Street
Tampa, Florida 33602
(813) 826-2284

GEORGIA

ATLANTA DISTRICT OFFICE
Citizens Trust Building, 10th Floor
75 Piedmont Avenue, N.E.
Atlanta, Georgia 30303
(404) 221-4566

ILLINOIS

CHICAGO DISTRICT OFFICE
Federal Building, Room 234
536 South Clark Street
Chicago, Illinois 60605
(312) 353-2687

INDIANA

INDIANAPOLIS DISTRICT OFFICE
Federal Building, U.S. Courthouse
41 East Coin Street, Room 454
Indianapolis, Indiana 46204
(317) 269-7212

KENTUCKY

LOUISVILLE AREA OFFICE
U.S. Post Office and Courthouse
601 West Broadway, Room 105
Louisville, Kentucky 40203
(502) 352-4903

LOUISIANA

NEW ORLEANS DISTRICT OFFICE
F. Ed Herbert Federal Building
446 South Street
New Orleans, Louisiana 70130
(504) 589-3843

MARYLAND

BALTIMORE DISTRICT OFFICE
Botmade Boulevard, Suite 218
711 West 48th Street
Baltimore, Maryland 21211
(301) 542-3922

MASSACHUSETTS

BOSTON AREA OFFICE
150 Courmany Street, Suite 1000
Boston, Massachusetts 02114
(617) 223-1535

MICHIGAN

DETROIT DISTRICT OFFICE
Federal Building and Old Courthouse
231 W. Layfayette Street, Room 441
Detroit, Michigan 48226
(313) 226-7636

MINNESOTA

MINNEAPOLIS AREA OFFICE
Plymouth Building
12 South Sixth Street
Minneapolis, Minnesota 55402
(612) 725-6101

MISSISSIPPI

JACKSON AREA OFFICE
Petroleum Building, Suite 500
200 East Fascayoula Street
Jackson, Mississippi 39201
(601) 963-6537

MISSOURI

KANSAS CITY AREA OFFICE
1150 Grand, 1st Floor
Kansas City, Missouri 64106
(316) 374-5773

ST. LOUIS DISTRICT OFFICE
1601 Olive Street
St. Louis, Missouri 63103
(314) 425-5571

NEW JERSEY

NEWARK AREA OFFICE
744 Broad Street, Room 582
Newark, New Jersey 07102
(201) 645-5907

NEW MEXICO

ALBUQUERQUE AREA OFFICE
Western Bank Building, Suite 1515
505 Marquette, N.W.
Albuquerque, New Mexico 87101
(505) 766-2061

NEW YORK

BUFFALO AREA OFFICE
One West Genesse Street, Room 320
Buffalo, New York 14202
(716) 846-4441

NEW YORK DISTRICT OFFICE
90 Church Street, Room 1301
New York, New York 10007

NORTH CAROLINA

CHARLOTTE DISTRICT OFFICE
401 N. Tryon Street, 2nd Floor
Charlotte, North Carolina 26292
(704) 371-6431

RALEIGH AREA OFFICE
414 Fayetteville Street
Raleigh, North Carolina 27604
(919) 755-4064

OHIO

CINCINNATI AREA OFFICE
Federal Building, Room 7019
550 Main Street
Cincinnati, Ohio 44114
(313) 000-2379

CLEVELAND DISTRICT OFFICE
Engineers' Building, Room 402
1365 Ontario Street
Cleveland, Ohio 44114
(216) 522-4793

DAYTON AREA OFFICE
Federal Building
200 West 2nd Street
Dayton, Ohio 45402
(513) 225-2753

OKLAHOMA

OKLAHOMA CITY AREA OFFICE
50 Penn Place, Suite 1634
Oklahoma City, Oklahoma 73118
(405) 231-4912

PENNSYLVANIA

PHILADELPHIA DISTRICT OFFICE
127 North 4th Street, Suite 206
Philadelphia, Pennsylvania 19106
(215) 597-7784

PITTSBURGH AREA OFFICE
Federal Building, Room 2038A
100 Liberty Avenue
Pittsburgh, Pennsylvania 15222
(412) 644-3444

SOUTH CAROLINA

GREENVILLE AREA OFFICE
Hasboro Trust Building, 5th Floor
7 North Loereas Street
Greenville, South Carolina 29602
(203) 233-1791

TENNESSEE

MEMPHIS DISTRICT OFFICE
1407 Union Avenue, Suite 502
Memphis, Tennessee 36194
(901) 521-2617

NASHVILLE AREA OFFICE
Parkway Towers, Suite 1822
404 James Robertson Parkway
Nashville, Tennessee 37219
(615) 215-5820

TEXAS

DALLAS DISTRICT OFFICE
Corrigan Tower, 6th Floor
212 North St. Paul
Dallas, Texas 75201
(214) 767-4607

EL PASO AREA OFFICE
Property Trust Building
2211 East Missouri, Room E-235
El Paso, Texas 79903
(915) 543-7596

HOUSTON DISTRICT OFFICE
Federal Building, Room 1101
2320 LaBranch
Houston, Texas 77004
(713) 226-3561

SAN ANTONIO AREA OFFICE
727 E. Durango, Suite B-401
San Antonio, Texas 78204
(512) 229-6051

VIRGINIA

NORFOLK AREA OFFICE
215 East Plume Street
Norfolk, Virginia 23510
(904) 441-3475

RICHMOND AREA OFFICE
400 North 8th St., Room 8213
Richmond, Virginia 23219
(904) 782-2911

WASHINGTON D. C.

WASHINGTON AREA OFFICE
1717 "N" St., N.W., Suite 482
Washington, D.C. 20004
(202) 653-6197

WASHINGTON

SEATTLE DISTRICT OFFICE
Dexter Morton Building
710 Second Avenue
Seattle, Washington 98184
(206) 422-0975

WISCONSIN

MILWAUKEE DISTRICT OFFICE
342 W Water St., Room 612
Milwaukee, Wisconsin 53202
(414) 224-1135

* If there is not an EEOC office in your state, contact the office in the state nearest you or your state agency that handles discrimination in the workplace.

(PLEASE PRINT OR TYPE)

APPROVED BY OMB 3046-0012 Expires 12/31/83	CHARGE OF DISCRIMINATION IMPORTANT: This form is affected by the Privacy Act of 1974, see Privacy Act Statement on reverse before completing it.	CHARGE NUMBER(S) (AGENCY USE ONLY) ☐ STATE/LOCAL AGENCY ☒ EEOC

Equal Employment Opportunity Commission and
(State or Local Agency)

NAME (Indicate Mr., Ms. or Mrs.)	HOME TELEPHONE NUMBER (Include area code)
Susan B. Anthony	
STREET ADDRESS	(916) 001-4900
926 J Street	
CITY, STATE, AND ZIP CODE	COUNTY
Sacramento, Ca 95814	Sacramento, CA

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME. (If more than one list below).

NAME	TELEPHONE NUMBER (Include area code)
John' Doe's Pizzeria	(916) 063-4251
STREET ADDRESS	CITY, STATE, AND ZIP CODE
3200 H Street	Sacramento, CA 95814
NAME	TELEPHONE NUMBER (Include area code)
STREET ADDRESS	CITY, STATE, AND ZIP CODE

CAUSE OF DISCRIMINATION BASED ON MY (Check appropriate box(es))

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☐ OTHER (Specify)

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, and year) July 13, 1984

THE PARTICULARS ARE

I. I started to work for Respondent as a waitress on October 7, 1983. On July 13, 1984, I was forced to quit my job because of Mr. Rubini, my supervisor's offensive sexual advances towards me.

II. I feel that I was forced to quit my job which I liked except for the conditions I had to work under.

III. For the following reasons I believe that I have been forced to quit my job because of sexual harassment I was subjected to during my employment because of my sex, female.

A. Mr. Rubini, my supervisor, more than once took me to his back room (in private) and held me close, kissed, and offensively touched my body against my will.

B. On many occasions other than the above Mr. Rubini touched my breasts, legs, and body against my will while on the job.

C. I finally left my employment with John Doe's Pizzeria because I felt that Mr. Rubini's conduct interfered with my work performance as I felt intimidated and feared losing my job if I failed to fully cooperate with Mr. Rubini's offensive advances and continuous sexual harassment.

I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY — (When necessary to meet State and Local Requirements) I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief
I declare under penalty of perjury that the foregoing is true and correct.	SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)
DATE 9/1/84 CHARGING PARTY (Signature)	

EEOC FORM 5B MAR 79 PREVIOUS EDITIONS OF ALL EEOC FORM 5'S ARE OBSOLETE AND MUST NOT BE USED

Appendix K

FORM EXEMPT UNDER
44 U.S.C. 3512

FORM NLRB-508
(5-81)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

DO NOT WRITE IN THIS SPACE
Case No.
Date Filed

INSTRUCTIONS: File and original and 3 copies of this charge and an additional copy for each organization, each local, and each individual named in item 1 with the NLRB Regional Director of the Region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name	b. Union Representative to Contact
Union of Papercup Workers	Mr. Dixie Cup

c. Telephone No.	d. Address (street, city, state and ZIP code)
123-4567	123 1st Street, Sacramento, CA 95814

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) _____ (list subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Union representative, Mr. Dixie Cup, refused to represent me on a sexual harassment grievance against my foreman, John Doe. Mr. Dixie Cup stated on June 10, 1985 that John Doe was being represented by our Union because he had been reprimanded for sexually harassing me and to also represent me would be a conflict of interest. However, after repeated requests Mr. Dixie Cup also refused to arrange for outside representation to complete arbitration on my grievance.

3. Name of Employer	4. Telephone No.
Papercup Factory	456-7890
5. Location of Plant Involved (street, city, state and ZIP code)	**6. Employer Representative to Contact**
1600 Cup Street, Sacramento, CA 95814	Mr. Big Cup

7. Type of Establishment (factory, mine, wholesaler, etc.)	8. Identify Principal Product or Service	9. No. of Workers Employed
factory	papercups	63

10. Full Name of Party Filing Charge	
Susan B. Anthony	
11. Address of Party Filing Charge (street, city, state and ZIP code)	**12. Telephone No.**
926 J Street, Sacramento, CA 95814	(916) 001-4900

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By _____ _____
(signature of representative or person making charge) (title or office, if any)

Address 926 J Street, Sacramento, CA 95814 001-4900 June 12, 1985
(telephone number) (date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

Appendix L

FORM EXEMPT UNDER 44 U.S.C. 3512

FORM NLRB 501 (2-93)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer	b. Number of workers employed
Papercup Factory	63

c. Address (street, city, state, ZIP code)	d. Employer Representative	e. Telephone No.
1600 Cup Street, Sacramento, CA 95814	Mr. Big Cup	456-7890

f. Type of Establishment (factory, mine, wholesaler, etc.)	g. Identify principal product or service
factory	papercups

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) _____ of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Mr. John Doe, my supervisor, engaged in sexual harassment towards me and several other female employees employed in the Papercup Factory when he discovered a meeting on June 4, 1984, in which the female employees of the factory were gathered to discuss the problem of sexual harassment in the Papercup Factory. On the following day, June 5, 1984, Mr. John Doe, verbally abused me and several other female employees who attended the meeting. He called us offensive names. He allotted more work to us than was usual. When we continued to act collectively against the problem of sexual harassment, Mr. John Doe began making offensive sexual advances towards me and other female co-workers. He spread rumors about us, telling other workers that we were lesbians. We were threatened on numerous occasions to discontinue our activities or risk losing our jobs.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
Susan B. Anthony

4a. Address (street and number, city, state, and ZIP code)	4b. Telephone No.
926 J Street, Sacramento, CA 95814	(916) 001-4900

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____ _____
(signature of representative or person making charge) (title if any)

Address 926 J Street, Sacramento, CA 95814 (916) 001-4900 June 15, 1984
(Telephone No.) (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

STATE OF CALIFORNIA—STATE AND CONSUMER SERVICES AGENCY

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

(SEE ADDRESS CHECKED BELOW)

☐ 1620 F Street
Bakersfield, CA 93301
(805) 395-2728

☐ 1900 Mariposa Mall, Suite 130
Fresno, CA 93721
(209) 445-5379

☐ 322 West 1st Street, # 2126
Los Angeles, CA 90012-3112
(213) 620-2610

☐ 1111 Jackson Street
Oakland, CA 94607
(415) 464-4095

☒ 1201 I Street, Suite 214
Sacramento, CA 95814
(916) 445-9918

☐ 375 W. Hospitality Lane, 2nd Flr.
San Bernardino, CA 92408
(714) 383-4711

☐ 110 West C St., # 1702
San Diego, CA 92101
(619) 237-7405

☐ 30 Van Ness Ave., 3rd Flr.
San Francisco, CA 94102
(415) 557-2005

☐ 888 No. 1st Street, # 316
San Jose, CA 95112
(408) 277-1264

☐ 28 Civic Center Plaza, # 538
Santa Ana, CA 92701
(714) 558-4159

☐ 5720 Ralston St., # 302
Ventura, CA 93003
(805) 654-4513

Pre-Complaint Instructions And Checklist

This information is sent to help you decide whether or not your employment problem can be handled by the Department of Fair Employment and Housing. IT IS NOT MEANT TO DISCOURAGE YOU FROM FILING A COMPLAINT. If you have difficulty understanding these instructions or have any questions, call the phone number of the office checked on the letterhead and ask to speak to a consultant.

TDD units for hearing and/or speech impaired persons are available in Sacramento at (916) 324-1678 and in Los Angeles at (213) 620-3109.

There are many unfair practices which are not covered by the law we enforce. If you answer "YES" to the following questions, you probably have the basis for filing a complaint with this agency. To file a complaint, you should call the phone number on the letterhead or the appropriate TDD number and arrange to meet with a consultant. At that meeting, be prepared to provide the information listed on the enclosed Interview Preparation Guide.

If we do not hear from you, we will proceed no further.

Section I—We can only take complaints of illegal discrimination. This means the unfair treatment about which you are complaining must have happened because of one or more of the reasons listed below:

Your race Your sex Your religious beliefs Your color Your national origin Your ancestry Your medical condition Your age (if 40 or older) Your marital status A problem related to your pregnancy A problem related to a physical handicap	Harassment because of your race, sex, religious beliefs, etc. Because you oppose a violation of this law. Because you associate with someone protected by this law. Because you participated in any way in an investigation, hearing or other proceeding conducted by the Department or the Fair Employment and Housing Commission. Because your employer failed to take all reasonable steps to prevent harassment or discrimination.

Unfair treatment that is not due to one or more of the above reasons is not handled by this Department.

Do you believe that you were discriminated against for one or more of the above reasons? YES [xx] NO [ ]

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Section II—It is not easy to prove discrimination. In order to file a complaint, you must have information to explain why you believe the unfair treatment was because of one or more of the reasons listed in Section I. When we investigate your case, we need either direct evidence (racial slurs, sexist slurs, harassment) or we need to find evidence that you were treated differently in comparison to individuals not of your race, sex, or whatever reason(s) on which you are basing your complaint.

For example, if you are black and were fired for being absent too often, we probably cannot prove discrimination unless we find that non-blacks who were absent as often were not terminated.

In some kinds of cases, such as religious discrimination or physical handicap discrimination, the key evidence may take other forms.

Do you think that if we investigate your complaint, we can find proof that you were subjected to discrimination for one or more of the reasons listed in Section I?
YES [xx] NO [ ]

If you answered "YES" to the above questions and want to file a complaint, arrange for an interview with your local DFEH office and be prepared to provide the information listed on the enclosed sheet. Bring to the interview any papers you have which will help us to understand your problem. A meeting with a consultant is essential. In the event a visit to our office poses an extreme hardship, send a letter including all of the information requested on the enclosed Interview Preparation Guide. An interview, however, may still be necessary.

IF YOU ARE COMPLAINING ABOUT SOMETHING THAT HAPPENED OVER ELEVEN (11) MONTHS AGO, call the phone number on the letterhead or the appropriate TDD number immediately and ask to speak to a consultant. Any delay may cause a time problem that could prevent us from accepting your complaint.

Remember: IT IS ILLEGAL FOR AN EMPLOYER TO RETALIATE AGAINST YOU FOR FILING A COMPLAINT OR FOR CONTACTING THIS DEPARTMENT.

Call the telephone number on the letterhead or the appropriate TDD number if these instructions are not clear or if you have any questions.

DFEH-200-18 (10/85)
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

INTERVIEW PREPARATION GUIDE

Upon arrival for your interview, you will be asked to complete a Pre-Complaint Questionnaire. To save time and to be certain you have as much of the requested information as possible, please bring written notes of the following:

1. Name, street, address, city, ZIP code and phone number of the employer (or union, or employment agency, etc.) against whom you want to file a complaint.

2. Name, title and phone number of the individual(s) who made the decision you are complaining about.

3. The reason(s) given you for the action taken against you.

4. The dates the action(s) complained of occurred.

5. The reason(s) you believe your treatment was the result of discrimination.

6. The name(s), job title, race, sex, etc., of those treated more favorably.

7. The name(s) of any witness(es) you think can provide evidence in your support.

8. The address and phone number of the witness(es) and a description of the information each of them can provide.

9. The remedy you are seeking by filing a complaint with the Department of Fair Employment and Housing.

10. The name, address and phone number of your attorney, if you have consulted one regarding this matter.

STATE OF CALIFORNIA—STATE AND CONSUMER SERVICES AGENCY GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

PRE-COMPLAINT QUESTIONNAIRE - EMPLOYMENT

The information requested on this form will help us to help you. There is no guarantee that the information submitted will constitute a basis for filing a formal complaint. If you need assistance in preparing this form, please ask the receptionist. When completed, give the form to the receptionist.

FOR OFFICIAL USE ONLY

Name of Interviewer _____

Date of Interview _____

Date July 10, 1984

PLEASE PRINT

Name Susan (First) B. (Middle) Anthony (Last)

Address 926 J Street (Street) (Apt. Number)

Sacramento (City) Sacramento (County) 95814 (Zip Code)

Telephone Number: Work (916) 006-3421 (Area Code) Ext. _____ Home (916) 001-4900 (Area Code)

I prefer to be contacted by phone at work ___ at home X days Monday

Name E. Candi Stanton (Person to contact if you cannot be reached) Telephone (916) 001-3002 (Area Code)

I wish to complain against: (Name of employer, city, county, agency, etc.)

Name of Employer Chris F. Rubini, John Doe's Pizzeria

Address 3200 H Street (Street)

Sacramento (City) Sacramento (County) 95814 (Zip Code)

Telephone Number: (916) 063-4251 (Area Code) Number of Employees 20

Others: _____

Address _____ (Street)

_____ (City) (County) (Zip Code)

---

1. I was discriminated against because of my: (check only those which apply)

___ Race ___ Color ___ National Origin/Ancestry
X Sex ___ Age (over 40) ___ Physical Handicap
___ Medical Condition ___ Religion ___ Marital Status

2. How do you feel you were discriminated against?

___ Termination ___ Denied Employment ___ Denied Promotion

X Differential treatment (i.e., harassment, unequal pay, etc.)

Other _____ (Please Specify)

DFEH-600-03 (5/82)

3. What reasons were given by the employer for the action taken against you?

No reasons given, but I learned that my supervisor gave me a poor evaluation which may have cuased me not to be promoted.

4. Date of alleged discrimination: July 4, 1984

5. What remedy are you seeking through OFEH? Counsel/advise my employer in order to end sexual harassment and reconsider my application for promotion.

6. Employment data:

A. Date Hired October 7, 1983 Job Title Food Service Worker

B. Date of Termination July 13, 1984

C. Job title at time of discrimination same

D. Title and salary of position in question Manager $ /

E. Name of immediate supervisor Chris F. Rubini

F. Is there a union? No If so, name the union and local # _____

G. Have you filed a union grievance? _____ If so, what happened? _____

H. Have you attempted to resolve your problem by discussing the matter with a representative of management? _____ If so, name the parties contacted _____

I. If terminated, have you since been employed? Yes ___ No X

Name of company _____ Date of hire _____

Job title _____ Salary $ /

7. What information do you have to indicate that you were treated differently because of discrimination?

My supervisor, Mr. Rubini, more than once took me to his back room and held me close, kissed, and offensively touched my body against my will. At other times he touched my breasts, legs, and body against my will while on the job. I finally left my employment with John Doe's Pizzeria because I felt that Mr. Rubini's conduct interfered with my work performance as I felt intimidated of losing my job if I failed to fully cooperate with Mr. Rubini's sexual harassment.

(Continued on next page)

8. List the names, job titles and telephone numbers (if possible) of witnesses you feel could provide evidence in your support.

Name	Title	Telephone Numbers Home	Work
Elizabeth C. Stanton	Food Service Worker	916/001-3002	916/001-4003

9. Did you file a complaint with EEOC before coming to this agency? Yes__ No X

10. Complaints other than marital status, medical condition and physical handicap filed with DFEH are often simultaneously filed with the Equal Employment Opportunity Commission of the federal government. (Employer must have 15 or more employees, and alleged act must have occurred within 300 days of filing.) In no way does this delay the complaint being processed by this agency. If your complaint is accepted by DFEH, do you wish a copy forwarded to EEOC? Yes X No ___

11. Have you filed with any other group or agency? If so, name, address, and telephone numbers are requested.

OFCC, 450 Golden Gate Avenue, San Francisco, CA 94102

HR, FHC, 2131 Capitol Avenue, Suite 206, Sacramento, CA 95814 444-6903

Unemployment Insurance Program, Employment Development Department

12. Do you have an attorney? If so, please provide name, address and telephone number. Gertrude Stein

31 X Street #10, Sacramento, CA 94321

13. Personal Data: For research purposes, please provide us with the following information:

ETHNIC GROUP: Black___ Hispanic___ Asian___ Filipino___ Anglo X___

Native American___ Other Minority_____ (Please Specify)

SEX: Female X Male ____

AGE: 44

14. I learned about the Department of Fair Employment and Housing from:

___ Newspaper ___ Radio ___ TV ___ Bus/BART Ad ___ Poster X Friend

Prior Contact with DFEH ___ Other Government Agency _____ (Specify)

Community Organizations (Specify) _____

Other (Specify) _____

-3-

Appendix N

U.S. GOVERNMENT PRINTING OFFICE: 1981 725-822

(PLEASE PRINT OR TYPE)

APPROVED BY OMB 3046-0013 Expires 12/31/83

CHARGE OF DISCRIMINATION

IMPORTANT: This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing it.

CHARGE NUMBER(S) (AGENCY USE ONLY)

☒ STATE/LOCAL AGENCY

☐ EEOC

CA State Department of Fair Employment and Housing and Equal Employment Opportunity Commission
(State or Local Agency)

NAME (Indicate Mr., Ms. or Mrs.)
Ms. Susan B. Anthony

HOME TELEPHONE NUMBER (Include area code)

STREET ADDRESS
926 J Street

CITY, STATE, AND ZIP CODE
Sacramento, CA 95814

COUNTY

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME. (If more than one list below).

NAME
John Doe's Pizzeria

TELEPHONE NUMBER (Include area code)
916-063-4251

STREET ADDRESS
3200 H Street

CITY, STATE, AND ZIP CODE
Sacramento, CA 95814

NAME

TELEPHONE NUMBER (Include area code)

STREET ADDRESS

CITY, STATE, AND ZIP CODE

CAUSE OF DISCRIMINATION BASED ON MY (Check appropriate box(es))

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☐ OTHER (Specify)

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, and year)
July 4, 1984

THE PARTICULARS ARE

I. I started to work for Respondent as a waitress on October 7, 1983. On July 13, 1984, I was forced to quit my job because of Mr. Rubini, my supervisor's, offensive sexual advancements towards me.

II. I feel I was forced to quit my job which I liked except for the conditions I had to work under.

III. For the following reasons I believe that I have been forced to quit my job because of sexual harassment I was subjected to during my employment because of my sex, I am female.

A. Mr. Rubini, my supervisor, more than once took me to his back room (private) and held me close, kissed, and offensively touched my body against my will.

B. On many other occasions Mr. Rubini touched my breasts, legs, and body against my will while on the job.

C. I finally left my employment with John Doe's Pizzeria because I felt that Mr. Rubini's conduct interfered with my work performance as I feared losing my job if I failed to fully cooperate with Mr. Rubini's offensive advances and continuous sexual harassment.

☒ I also want this charge filed with the EEOC

I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)
July 13, 1984

NOTARY — (When necessary to meet State and Local Requirements)

Appendix O

State Personnel Board

Sexual Harassment Policy

CALIFORNIA STATE PERSONNEL BOARD
March 20, 1981

MEMO TO: ALL STATE AGENCIES

SUBJECT: Sexual harassment policy

It is the policy of the State of California that employees have a working environment free of discrimination. The work environment should be businesslike and assure fair, courteous treatment for employees and the public we serve. Sexual harassment is a form of discrimination. It is employee misconduct that can decrease work productivity, undermine the integrity of employment relationships, decrease morale, and cause severe emotional stress and physical damage.

We strongly and unequivocally oppose sexual harassment, and we expect State agency secretaries and department directors to convey strong disapproval of such behavior to their employees. If you have not established a policy statement on this subject, you should do so immediately. Your policy statement should clearly define sexual harassment as prohibited behavior that violates both State and Federal law and guidelines published by the Equal Employment Opportunity Commission. It should also indicate that such conduct will be subject to immediate disciplinary action.

All employees should be informed of the discrimination complaint process and be assured of their right to file complaints without fear of reprisal. Employees should also understand the importance of reporting incidents promptly to assure that further incidents do not occur.

Employees, supervisors and managers should be sensitized to behavior that constitutes sexual harassment and the consequences of such actions, and they should be aware that such conduct will result in disciplinary action being taken against violators, as well as the possibility of civil liability for both violators and the Department Director.

Please distribute a copy of your departmental policy statement to all employees by June 15, 1981. Additionally, send a copy of the policy by June 15 to the Personnel Board's Women's Program Unit at 801 Capitol Mall, Sacramento, CA 95814.

What is Sexual Harassment?

Sexual harassment is typically defined as unsolicited and unwelcomed sexual overtures, be they written, verbal, physical and/or visual, that usually occur when:

1. Submission is made either explicitly or implicitly a term or condition of employment;
2. Submission or rejection by an employee is used as a basis for employment decisions affecting the employee; *or*
3. Such conduct has the potential to affect an employee's work performance negatively and/or create an intimidating, hostile or otherwise offensive work environment.

Written examples of sexual harassment include suggestive or obscene letters, notes and invitations; verbal examples include derogatory comments, slurs, jokes, and epithets; physical examples include assault, touching, impeding or blocking movements; and visual examples include leering, gestures, or display of sexually suggestive objects or pictures, cartoons, or posters. Other examples include threats of reprisal; implying or actually withholding support for appointments, promotion or transfer; rejection on probation; punitive actions; change of assignments; or suggesting that a poor performance report will be prepared if requests for sexual favors are not met.

What are Departments' Obligations and/or Responsibilties?

Every department has an obligation to assure that the work environment is free from all types of discrimination—including sexual harassment. Prevention is the best tool. Prompt, appropriate action may help to avoid, or at least minimize, the incidence of sexual harassment and potential employer liability.

As chief executive of your department, you are responsible for the actions of your employees. A policy statement and training to sensitize employees, supervisors and managers to behavior that constitutes sexual harassment is essential. All departmental supervisors' training and employee orientation programs should contain a comprehensive section on sexual harassment, employee rights and options. Language stating the department's commitment to the prevention and prohibition of sexual harassment should be included in all departmental affirmative action plans.

You should also be aware that in addition to the obvious morale, turnover and productivity implications, there can also be costly court proceedings which may result in back pay or punitive damage awards, withdrawal of Federal support funds and other adverse actions in situations where sexual harassment is found to have occurred.

It should be further noted that courts have held in recent rulings that, when a supervisor makes sexual advances and bases a promotion or the retention of a job on the acceptance of these advances, he or she may be *personally* liable.

How can Complaints be Handled?

Each department has a responsibility to provide counseling, support and/or referral services to sexual harassment victims. Under State Personnel Board Rules, each department is required to establish a process for dealing with complaints of discrimination. State employees who believe that they are or have been victims of sexual harassment should be advised to seek informal remedies through their departmental discrimination complaint process. Additionally, employees may file discrimination charges with the EEOC (Federal level) within 300 days of the incident regardless of the status of a departmental complaint. Their address is 1390 Market Street, Suite 325, San Francisco, CA 94102; their phone number is (415) 556-0261.

Employees should also be advised of the importance of informing the harasser that his/her behavior is unwelcome, offensive, in poor taste or highly inappropriate. If an employee feels uncomfortable or has difficulty expressing disapproval, informal assistance or counseling should be sought from departmental Affirmative Action Officers, Civil Rights Officers, Equal Employment Opportunity Counselors, Women's Program officers, advocate groups or employee organizations.

For More Information

A more detailed memorandum on this subject has been sent to Personnel Officers, Affirmative Action Officers, Equal Employment Opportunity Counselors and Women's Program Officers. If you wish to make further inquiries, please feel free to contact the Women's Program Unit at the Personnel Board at (916) 323-0723, ATSS 473-0723.

RONALD M. KURTZ
Executive Officer

The State Personnel Board has just issued a policy memoran-

dum to Department Directors and Agency Secretaries regarding the subject of sexual harassment. That memorandum, in the form of a "pinkie," required departments to establish a policy prohibiting sexual harassment, convey information to all employees regarding the problems of sexual harassment and, finally, to send a copy of the policy to the State Personnel Board Women's Program Manager by June 15, 1981.

In order to assist you in educating and sensitizing employees, we are distributing some additional information on sexual harassment, including more detailed examples; a description of employee rights; consequences of sexual harassment for both employee and employer; complaint filing options; and some specific guidelines for developing a comprehensive sexual harassment policy.

It should be made clear to all that sexual harassment is prohibited by both State and Federal laws, and guidelines of the Equal Employment Opportunity Commission.

DEFINITION

Sexual harassment is defined as unsolicited and unwelcome sexual advances, requests for sexual favors, and other verbal, physical or visual conduct of a sexual nature which occurs under any one of three circumstances:

1. Submission is made either explicity or implicitly a term or condition of employment.
2. Submission or rejection by an employee is used as a basis for employment decisions affecting the employee.
3. Such conduct has the potential to affect an employee's work performance negatively and/or create an intimidating, hostile or otherwise offensive working environment.

For the purpose of further clarification, sexual harassment includes, but is not limited to:

1. Making unsolicited written, verbal, physical and/or visual contact with sexual overtones. (Written examples: suggestive or obscene letters, notes, invitations. Verbal examples: derogatory comments, slurs, jokes, epithets. Physical examples: assault, touching, impeding or blocking movement. Visual examples: leering, gestures, display of sexually suggestive objects or pictures, cartoons, or posters.)
2. Continuing to express sexual interest after being informed that the interest is unwelcome. (Reciprocal attraction is not considered sexual harassment.)
3. Making reprisals, threats of reprisal, or implied threats of reprisal following a negative response. For example, either implying or actually withholding support for an appointment, promotion, or change of assignment; suggesting a poor performance report will be prepared, or suggesting probation will be failed.
4. Engaging in implicit or explicit coercive sexual behavior which is used to control, influence, or affect the career, salary, and/or work environment of another employee.
5. Offering favors or employment benefits, such as promotions, favorable performance evaluations, favorable assigned duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.

CONSEQUENCES OF THE PROBLEM

Sexual harassment is a form of discrimination. It is employee misconduct that can decrease work productivity, undermine the integrity of employment relationships, decrease morale and cause severe emotional stress and physical damage. Such behavior can have economic consequences to both employer and employee as well. Employees who have refused advances in some instances have been dismissed, denied pay raises, and/or denied promotional opportunities. This is clearly unfair and inappropriate.

Department Directors and managers and supervisors also face serious economic implications because of their inherent responsibility for the actions of their employees. Incidents of sexual harassment can lead to:

- High turnover rate and increased time and money spent on training.
- Ineffective use of time during work hours.
- Costly salaries paid for nonproductive work hours.
- Employee absence due to court hearings and meetings related to discrimination complaints.
- Costs of reinstatement, back pay, and punitive damage awards.
- Withdrawal of federal support funds.
- Disciplinary sanctions.
- Workers' compensation claims.
- Breach of contract awards.
- Embarassment and adverse publicity.

DEPARTMENTAL RESPONSIBILITY

Departments are responsible for creating a workplace environment free of sexual harassment. They share with the State Personnel Board responsibility for providing counseling, assistance and support for victims of sexual harassment.

Prevention is the best tool against sexual harassment. Prompt, appropriate department action may help avoid, or at least minimize, the incidence of sexual harassment and employer liability. A policy statement prohibiting sexual harassment and training to sensitize employees, supervisors and managers to behavior that constitutes sexual harassment is essential. All departmental supervisory training and employer orientation programs should contain a comprehensive section on sexual harassment and employee's rights and options. Departmental affirmative action plans should highlight the department's commitment to prevent and prohibit sexual harassment.

EMPLOYEE RESPONSIBILITY

An employee should understand the importance of informing an individual that his/her behavior is unwelcome, offensive, in poor taste or highly inappropriate. If an employee (victim) feels threatened or has difficulty expressing disapproval, informal assistance and counseling should be sought from such persons as the departmental Women's Program Officer, Affirmative Action Officer, or the Equal Employment Opportunity Counselor. Employees may also wish to seek advice and counseling outside his/her department.

EMPLOYEES' RIGHTS

All departments are required to develop a discrimination complaint process. Protection under this process assures employees of:

1. The right to a discrimination-free work environment.
2. The right to an informal, confidential presentation of a complaint to a competent counselor.
3. The right to keep their complaint confidential until such time as they give the counselor permission to do otherwise, in order to bring the complaint to the appropriate authority for remedy; or until such time as a formal complaint is filed.
4. The right to a full, impartial and prompt investigation by a trained departmental investigator.
5. The right to review all relevant information developed and discovered during the course of any investigation and inquiry into the matter.
6. The right to a timely decision from the appointing power, or authority designated by the appointing power, after full consideration of all relevant facts and circumstances.
7. The right to be represented by a person of the complainant's choosing at each and all steps of the process.
8. The right to appeal the appointing power's decision within 30 days to the State Personnel Board or appropriate Federal agencies.
9. The right to be free from reprisals after filing a complaint.

HOW COMPLAINTS WILL BE HANDLED

Each department has the responsibility of providing counseling, support, and referral services to sexual harassment victims. Under State Personnel Board rules, each department is required to establish a process for dealing with complaints of discrimination. State employees who believe that they are or have been victims of sexual harassment should seek informal remedy through the departmental discrimination complaint process. Although cases will be dealt with on an individual basis, it is important that incidents of sexual harassment be reported as soon as possible.

POSSIBLE CONSEQUENCES FOR THE HARASSER

Employees should be made aware that acts of sexual harassment can lead to disciplinary action, including letters of reprimand, suspension, demotions, as well as the possibility of civil liability for both the violator and the Department.

STATE PERSONNEL BOARD INVOLVEMENT

An employee may appeal a departmental decision to the State Personnel Board within 30 days from the date of the decision. If you need assistance in this regard, you should contact the Appeals Division at (916) 445-3983 or ATSS 485-3983.

When sexual harassment is found to have occurred, the State Personnel Board can order employment-related remedies such as reinstatement, appointment (promotion or lateral transfer), back pay or other corrective actions. A victim may, with the consent of the Board, file charges against another State employee requesting that punitive action be taken for disciplinary purposes (Government Code Section 19583.5).

Personnel Board staff are available to assist departments in the development of a policy, to review departmental complaint processes for effectiveness and to assist in the training of employees. The Women's Program Unit in PEAAD [now AAMOD] is also available to assist departments and individuals in the support and counseling of victims of sexual harassment.

It is anticipated that an Intergovernmental Personnel Act (IPA) grant will enable the Board to assign an individual to deal specifically and exclusively with the problem of sexual harassment.

OTHER COMPLAINT FILING OPTIONS

Employees may file discrimination charges with the EEOC (Federal level) within 300 days of the incident, regardless of the status of a departmental complaint. For further information, contact the Equal Employment Opportunity Commission at 1390 Market Street, Suite 325, San Francisco, CA 94102 (415) 556-0261.

In addition, while we have discussed formal processes for resolving sexual harassment discrimination complaints, informal processes are also available and should be conveyed to employees. Contacts can be made with concerned and knowledgeable sources such as advocacy and special interest groups, employee organizations, local women's organizations and community counseling centers.

CIVIL PROCEEDINGS

Various tort lawsuits (e.g., breach of contract, assault and battery, intentional and negligent infliction of emotional distress, etc.) are also possible if the pursuit of a remedy through administrative procedures does not result in a satisfactory solution. The usual statute of limitations for filing is one year and it can take from three to seven years to receive disposition. It should be noted, however, that if this process is used, a claim must first be presented to the Board of Control within 100 days of the discrimination event (Government Code Section 900-910).

FOR MORE INFORMATION

Employees wishing to make further inquiries regarding the sexual harassment policy may contact the State Personnel Board's Public Employment and Affirmative Action Division, specifically the Women's Program Unit, at (916) 323-0723, or ATSS 473-0723. Information regarding the discrimination complaint process can also be obtained from the Appeals Division at (916) 445-3983 or ATSS 485-3983.

MARCH 19, 1981

Attachment 1 to SPB Policy

Guidelines for Development of a Departmental Policy for Sexual Harassment

We recognize that policies will vary to meet the needs of each department, but a comprehensive policy will typically include the following components:

1. *Director's Statement of Commitment*

To raise the consciousness and awareness of all employees. Directors must lead the way. The policy should state the prohibition of sexual harassment and express commitment to enforcing disciplinary actions against such behavior.

2. *Definition of Sexual Harassment*

This portion of the policy should give a clear definition of the type of behavior that constitutes sexual harassment and cite specific examples of visual, written, verbal and physical forms of sexual harassment.

3. *Departmental Responsibility and Employee Rights and Responsibilities*

This information should cover employees' training and identify departmental counselors. It should stress the fact that employees have certain rights that are protected by law. (The right to a discrimination-free work environment, the right to file confidential complaints, the right to be represented, etc.) Employees should be advised of their individual responsibility to inform the harasser that his/her behavior is unwelcome, offensive, or highly inappropriate. Individuals should also be encouraged to file timely complaints.

4. *Potential Consequences of Sexual Harassment*

This information should emphasize the emotional and financial effects that sexual harassment can have on employees and employers. It should point out examples of some of the costly economic consequences and demonstrate potential ways that departmental productivity will decrease as a result of such behavior.

5. *Potential consequences for the "harasser"*

This section to highlight the types of disciplinary actions, such as letters of reprimand, suspension, demotion, as well as possible civil liabilities for both the harasser and the department.

6. *Discrimination Complaint Process*

This information should describe the discrimination complaint process, identify departmental and Personnel Board staff responsible for providing counseling and technical assistance. It should also encourage informal contact with advocacy and special interest groups, employee organizations, local women's organizations and community counseling centers. This information should also indicate the types of actions that may result from incidents of sexual harassment. (For example: removal of sexually suggestive objects, pictures, cartoons and posters, letters of reprimand, suspensions and removal from positions.)

7. *Additional Options*

Employees should be advised of the right to appeal a departmental decision to the State Personnel Board. Information on EEOC and other formal and informal options should also be provided.

STATE PERSONNEL BOARD RULES AND RELEVANT STATUTES

Article 25. Discrimination

547. Scope.

This article pertains to allegations of discrimination in State employment on the basis of age, sex, race, religious creed, color, national origin, ancestry, handicap, or marital status, in violation of State or Federal law. It implements the mandate imposed upon the State Personnel Board to insure that unlawful discrimination does not occur in the State civil service. To that end, it provides a process to correct the effects of such discrimination. All issues arising under these rules, may, if not resolved under the process prescribed hereunder, be appealed to the State Personnel Board.

NOTE: Sections 19700, 19701, 19702, 19702.1, 19702.2, 19702.5, 19703, 19704 and 19705, Government Code.

HISTORY:

1. New Article 25 (Sections 547, 547.1 and 547.2) filed 3-22-76; effective thirtieth day thereafter (Register 76, No. 13).
2. Amendment of NOTE filed 4-8-77; effective thirtieth day thereafter (Register 77, No. 15).

547.1. Procedure for Resolving Discrimination Complaints.

A complaint against an action, decision, policy or condition which is within the authority of the appointing power to resolve shall be first considered by the appointing power before referral to the Personnel Board. A complaint of discrimination which cannot be resolved by the appointing power, or which is not within the authority of the appointing power to resolve, shall be filed with the Personnel Board as an appeal. The executive officer may first attempt to resolve such a complaint informally, or refer it to the Board for hearing. Complaints which do not allege discrimination as set forth in Rule 547 shall be dealt with through the grievance procedure, if applicable, or filed as an appeal to the Board.

Each complaint must be in writing and state clearly the facts upon which it is based, and the relief requested, in sufficient detail for the reviewing authority to understand the nature of the complaint and who is involved.

Each appointing power may establish a written procedure through which an employee may obtain consideration for an allegation of discrimination. All such procedures are subject to the approval of the executive officer. Until the appointing power establishes an approved procedure, the standard procedure prescribed by the executive officer shall apply.

547.2. Standards.

Each discrimination complaint procedure shall:

(a) Provide for satisfying the complaint with a minimum of formal procedural requirements, by an organizational level closest to the employee concerned. Such provisions must include the opportunity for the employee to receive counseling on a confidential basis by an employee who is qualified to give counseling in matters pertaining to discrimination.

(b) Assure that no influence will be used to dissuade the employee from airing a complaint, that no complaint will be suppressed, nor will an employee be subject to reprisal for voicing a complaint or participating in the complaint procedure.

(c) Assure that the employee's complaint will receive preferred, timely and full consideration at each level of review, that investigation into the circumstances surrounding the complaint will be performed by qualified and impartial persons, and that the employee will be informed of all rights at each step of the process, including the right of appeal to the Board or to file with the appropriate State or Federal agency or court having jurisdiction.

(d) A complaint which is not resolved by an appointing power within 180 days from the date of formal filing with the appointing power, may be referred to the Board as an appeal for remedial action.

Article 4. Hearings

For the general statutory provisions on this subject, refer to Section 18670 of the act and sections following.

51. Scope of Article.

Except as otherwise provided herein, this article shall not apply to any punitive action or disciplinary proceeding.

NOTE: Reference: Section 18675, Government Code.

HISTORY:

1. Amendment filed 11-7-49 (Register 18, No. 5).
2. Amendment of NOTE filed 4-8-77; effective thirtieth day thereafter (Register 77, No. 15).

52. Definitions.

Unless the context requires otherwise, the definitions immediately hereinafter set forth govern the construction of this article.

53. "Appeal" means any written request for relief filed with the board and includes "application," "petition," and "protest."

54. "Appellant" means the person or state agency filing any appeal with the board.

55. "Hearing officer" means a person employed by the board in the class of hearing officer, State Personnel Board or Referee, State Personnel Board.

56. "Respondent" means the person or state agency whose interests are adverse to those of the appellant or who will be directly affected by the board's decision.

60. Right to Respond.

At least fifteen days prior to the date the board plans to take corrective action on an unlawful appointment, the executive officer shall notify the employee and the employee's appointing power of the proposed action. This notice shall state the reason(s) for the proposed action and notify the employee and the appointing power of their right to respond to the notice within the fifteen days either verbally or in writing.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18670, Government Code.

HISTORY:

1. New section filed 1-18-82; effective thirtieth day thereafter (Register 82, No. 4).

60.1. Right to Appeal.

When corrective action is taken on an unlawful appointment, the employee and the appointing power may file a written appeal with the board within 30 calendar days after the date of notification of the board's final decision to take the corrective action upon which the appeal is based.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18670, Government Code.

HISTORY:

1. New section filed 1-18-82; effective thirtieth day thereafter (Register 82, No. 4).

61. Right to Respond to Charges Prior to Punitive Action.

At least five calendar days prior to the effective date of any punitive action against an employee with permanent civil service status, the appointing power or any person authorized by it shall give the employee written notice of the proposed action, the reasons for such action, a copy of the charges and material upon which the action is based, and the right to respond either verbally or in writing, to the authority proposing the action prior to its effective date.

NOTE: Reference: Section 19574, Government Code.

HISTORY:

1. New section filed 10-16-75 as an emergency; designated effective 10-16-75 (Register 75, No. 42).

2. Amendment filed 1-15-76 as an emergency; designated effective 1-15-76. Certificate of Compliance included (Register 76, No. 3).

3. Amendment of section and NOTE filed 4-8-77; effective thirtieth day thereafter (Register 77, No. 15).

62. Request to File Charges.

A request of the board for consent to file charges under Section 19583.5 of the act shall be in writing and shall be accompanied by the proposed charges. The statement of proposed charges shall be signed and sworn to before a notary public or other person authorized to administer oaths. The statement shall clearly state the facts constituting the cause or causes for punitive action in such detail as is reasonably necessary to enable the employee to prepare a defense thereto.

Where it does not appear that the material facts alleged are within the personal knowledge of the complainant, the board may require the complainant to present supporting affidavits from persons having actual knowledge of the facts before acting upon the request.

Any failure to follow the procedure herein prescribed shall not invalidate subsequent proceedings if consent to file charges has been given.

NOTE: Reference: Section 19583.5, Government Code.

HISTORY:

1. New section filed 11-25-53; effective thirtieth day thereafter (Register 53, No. 21).

2. Amendment of section and NOTE filed 4-8-77; effective thirtieth day thereafter (Register 77, No. 15).

63. Appeal.

Every appeal filed with the board shall be written. It shall state the facts upon which it is based and the relief requested in sufficient detail to enable the board to understand the nature of the proceeding and the parties concerned. Unless the appeal names some other respondent, the appellant's appointing power shall be considered the only respondent. The executive officer or hearing officer shall mail or serve a copy of the appeal to or on the respondent.

64. Time of Filing.

Except as otherwise provided in the act or these rules, every appeal shall be filed with the board within 30 days after the appellant has been served with the notice, report, or document from which the appeal is taken or, if there has been no such service and none is required, within 30 days after the event happened upon which the appeal is based. Upon good cause being shown, the board, executive officer, or hearing officer may allow such an appeal to be filed within 30 days after the end of the period in which the appeal should have been filed.

HISTORY:

1. New Sections 64 and 65 filed 12-23-47 (Register 10, No. 8).

2. Repealer of NOTE filed 4-8-77; effective thirtieth day thereafter (Register 77, No. 15).

65. Answer.

Unless required by law or these rules, no answer to the appeal need be filed. If an answer is filed prior to the hearing, a copy thereof shall be mailed by the executive officer or hearing officer to the appellant. If no answer is filed and none is required, every material allegation of the appeal is in issue.

66. Dismissal of Appeals Not Brought to Hearing.

Any appeal referred or assigned to the Hearing Officer shall be dismissed unless it is brought to hearing within three years after such appeal was filed with the board or within three years after the effective date of this rule, whichever is later, except where the parties have filed a written stipulation specifically extending said three-year period.

NOTE: Reference: Section 18675, Government Code.

HISTORY:

1. New section filed 5-17-68; effective thirtieth day thereafter (Register 68, No. 18).

2. Amendment of NOTE filed 4-8-77; effective thirtieth day thereafter (Register 77, No. 15).

67. Reference to Hearing Officer.

When there is filed with the board charges under Section 19583.5 of the act or an answer to a punitive action under Section 19575 of the act or any appeal from a layoff pursuant to the administration of the provisions contained in Rules 470, 471, 472 and 473 from a transfer between civil service appointing powers or classifications, or from a rejection during probationary period if reinstatement to the position is requested, such filing shall automatically operate as the reference of every such proceeding to the hearing officer for hearing or investigation without hearing as appropriate; but no such reference shall preclude the board from recalling the proceeding for hearing or investigation by it. Any other proceeding may be assigned by the board or its president to the hearing officer for hearing or investigation. In any case, when a proceeding has been assigned to the hearing officer, the hearing officer is the authorized representative of the board and is fully authorized and empowered to grant or refuse extensions of time, to set such proceeding for hearing, to conduct a hearing or investigation in every such proceeding, and to perform any and all other acts in connection with such proceeding that may be authorized by law or these rules.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18671, 18675 and 19582, Government Code.

HISTORY:

1. Amendment of section and NOTE filed 4-8-77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 60, No. 24.

2. Amendment filed 11-26-85; effective thirtieth day thereafter (Register 85, No. 48).

68. Hearing and Decision.

In all cases referred or assigned to the hearing officer for hearing or investigation, including punitive actions and disciplinary proceedings, the hearing officer shall prepare a proposed decision in such form that it may be adopted as the decision in the case, except as otherwise directed by the board in cases where the assignment to the hearing officer is not automatic under these rules. The proposed decision shall include findings of fact which may be stated in the language of the pleadings or by reference to them. A copy of the proposed decision shall be filed with the board as a public record. The hearing officer may be present during the consideration of the case by the board, and if requested, shall assist and advise the board. Upon the filing of the proposed decision the board may adopt it in its entirety, or may reduce the punitive action set forth therein and adopt the balance of the proposed decision, or may itself decide the case upon the record, including the transcript, with or without taking additional evidence, or may refer the case to the same or another hearing officer, to take additional evidence. If the case is re-referred to a hearing officer, the hearing officer shall similarly prepare a proposed decision as above provided, upon the additional evidence taken and the transcript and other papers making up the record of the prior hearing, which may be adopted by the board as filed. The board itself shall decide no case upon the record in which the hearing officer has filed a proposed decision without affording the parties the opportunity to present either oral or written argument before the board itself.

NOTE: Reference: Sections 18675 and 19582, Government Code.

HISTORY:

1. Amendment of section and NOTE filed 4-8-77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 53, No. 16.

69. Rehearing.

Within 30 days after service of a copy of the decision any party to the proceeding may apply for a rehearing by filing with the board a written petition therefor. Within 30 days after such filing, the board shall cause a copy of the petition for rehearing to be served upon the other parties to the proceeding. Within 60 days after such service of the petition for rehearing, the board, itself, shall either grant or deny the petition in whole or in part. Failure to act upon a petition for rehearing within this 90-day period is a denial of the petition. If a rehearing is granted, the board may rehear the case itself on all the pertinent parts of the record of the prior hearing and such additional evidence and argument as may be permitted, or it may refer it to a hearing officer. A case so referred to a hearing officer shall be subject to the procedure provided in Rule 68.

HISTORY:

1. Amendment filed 6-28-48 (Register 13, No. 3).
2. Amendment filed 4-8-77; effective thirtieth day thereafter (Register 77, No. 15).

70. Decision Becomes Final When.

Unless a proper application for rehearing is made, every decision shall become final 30 days after service by the board of a copy of such decision upon the parties to the proceeding in which the decision is rendered.

HISTORY:

1. Amendment filed 6-28-48 (Register 13, No. 3).

73. Public Hearing; Counsel.

Every hearing, including the hearing of a disciplinary proceeding, shall be public. Any party may be represented by counsel.

74. Exclusion of Witnesses.

Upon the motion of any party, including the parties to a disciplinary proceeding, the hearing officer may exclude from the hearing room any witnesses not at the time under examination; but a party to the proceeding, or the party's counsel or other person representing a party, cannot be excluded. When a state agency is a party it is entitled, in addition, to the presence of one other officer or employee.

HISTORY:

1. New section filed 1-13-48 (Register 11, No. 2).
2. Amendment filed 4-8-77; effective thirtieth day thereafter (Register 77, No. 15).

SELECTED GOVERNMENT CODE SECTIONS
HEARINGS AND INVESTIGATIONS

Government Code

11507.6. After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after such service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to such person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that such reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of such oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

(g) In any proceeding under subdivision (i) or (j) of Section 12940, or Section 19572 or 19702, alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is not discoverable unless it is to be offered at a hearing to attack the credibility of the complainant as provided for under subdivision (j) of Section 11513. This subdivision is intended only to limit the scope of discovery; it is not intended to affect the methods of discovery allowed under this section.

(Amended by Stats. 1985, Ch. 1328, § 5.)

11513. (a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses, to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

In any proceeding under subdivision (i) or (j) of Section 12940, or Section 19572 or 19702, alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is not admissible at hearing unless offered to attack the credibility of the complainant, as provided for under subdivision (j). Reputation or opinion evidence regarding the sexual behavior of the complainant is not admissible for any purpose.

(d) The hearing shall be conducted in the English language, except that a party who does not proficiently speak or understand the English language and who requests language assistance shall be provided an interpreter approved by the administrative law judge or hearing officer conducting the proceedings. The cost of providing the interpreter shall be paid by the agency having juris-

diction over the matter if the administrative law judge or hearing officer so directs, otherwise the party for whom the interpreter is provided.

The administrative law judge's or hearing officer's decision to direct payment shall be based upon an equitable consideration of all the circumstances in each case, such as the ability of the party in need of the interpreter to pay, except with respect to hearings before the Workers' Compensation Appeals Board or the Division of Industrial Accidents relating to worker's compensation claims. With respect to these hearings, the payment of the costs of providing an interpreter shall be governed by the rules and regulations promulgated by the Workers' Compensation Appeals Board or the Administrative Director of the Division of Industrial Accidents, as appropriate. Such an interpreter shall be selected pursuant to regulations issued by both of the following:

(1) The State Personnel Board which shall establish criteria for an interpreter's proficiency in both English and the language in which the person will testify.

(2) The employing agency which shall establish materials and examinations for an interpreter's understanding of its technical program terminology and procedures.

(e) The State Personnel Board shall compile and publish a list of interpreters it has determined to be proficient in various languages and any interpreter so listed shall be eligible to be examined by each employing agency relating to its technical program terminology and procedures. Any interpreter whose language proficiency and knowledge of the terminology and procedures has been satisfactorily determined by the employing agency shall be deemed to be approved by an administrative law judge or a hearing officer of the agency.

(f) In the event that interpreters on the approved list cannot be present at the hearing, or if there is no interpreter on the approved list for a particular language, the hearing agency shall have discretionary authority to provisionally qualify and utilize other interpreters.

(g) Every state agency affected by this section shall advise each party of their right to an interpreter at the same time that each party is advised of the hearing date. Each party in need of an interpreter shall also be encouraged to give timely notice to the agency conducting the hearing so that appropriate arrangements can be made.

(h) The rules of confidentiality of the agency, if any, which may apply in an adjudicatory hearing, shall apply to any interpreter in the hearing, whether or not the rules so state.

(i) The interpreter shall not have had any involvement in the issues of the case prior to the hearing.

As used in subdivisions (d) and (e), the terms "administrative law judge" and "hearing officer" shall not be construed to require the use of an Office of Administrative Hearings' administrative law judge or hearing officer.

(j) Evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is presumed inadmissible absent an offer of proof establishing its relevance and reliability and that its probative value is not substantially outweighed by the probability that its admission will create substantial danger of undue prejudice or confuse the issue.

(k) For purposes of this section "complainant" means any person claiming to have been subjected to conduct which constitutes sexual harassment, sexual assault, or sexual battery.

(Amended by Stats. 1985, Ch. 1328, § 6.)

Note—Stats. 1985, Ch. 1328 provides:

SECTION 1. The Legislature finds and declares that it is the existing policy of the State of California to ensure that the causes of action for claims of sexual harassment, sexual assault, or sexual battery are given proper meaning. The discovery of sexual aspects of complainant's lives, as well as those of their past and current friends and acquaintances, has the clear potential to discourage complaints and to annoy and harass litigants. That annoyance and discomfort, as a result of defendant or respondent inquiries, is unnecessary and deplorable. Without protection against it, individuals whose intimate lives are unjustifiably and offensively intruded upon might face the "Catch-22" of involving their remedy only at the risk of enduring further intrusions into details of their personal lives in discovery, and in open quasi-judicial or judicial proceedings.

The Legislature is mindful that a similar state of affairs once confronted victims in criminal prosecutions for rape, who often ran the risk of finding their own moral characters on trial during the prosecution of their assailants. The Legislature has taken measures to curb those abuses in rape proceedings. It is the intent of the Legislature to take similar measures in sexual harassment, sexual assault, or sexual battery cases.

The Legislature concludes that the use of evidence of a complainant's sexual behavior is more often harassing and intimidating than genuinely probative, and the potential for prejudice outweighs whatever probative value that evidence may have. Absent extraordinary circumstances, inquiry into those areas should not be permitted, either in discovery or at trial.

Article 3. General Powers and Duties

18701. The board shall prescribe, amend, and repeal rules in accordance with law for the administration and enforcement of this part and other sections of this code over which the board is specifically assigned jurisdiction. Due notice of the contents of the rules shall be given to appointing powers and employees. Within a reasonable time after adoption, such rules and amendments shall be published in such manner as the board determines, and distributed free or at a reasonable cost.

(Amended by Stats. 1983, Ch. 527, § 1.)

18710. All orders and decisions of the board made pursuant to Article VII of the State Constitution or this part shall be obeyed by and are binding upon appointing powers and all their employees, including their personnel officers, regardless of whether an appointing power agrees or disagrees with a decision or order of the board.

All orders and decisions, other than orders or decisions of the board itself, shall be reviewed by the executive officer or an employee of the board designated by the executive officer.

If any appointing power refuses or neglects to comply with any such order or decision, the board may issue an order to show cause, directed to such appointing power, why the board should not file a petition for a writ of mandate to compel such appointing power to comply with such order or decision.

If the board finds that no good cause exists for the refusal or neglect of the appointing power to comply with such order or decision, the board shall file a petition for a writ of mandate in the manner and in the court provided for by law to compel such appointing power to comply with such order or decision.

This procedure for the enforcement of the orders and decisions of the board is in addition to any other means or procedure which may be provided by law.

(Amended by Stats. 1979, Ch. 866.)

19572. Each of the following constitutes cause for discipline of an employee, or person whose name appears on any employment list:

(a) Fraud in securing appointment.
(b) Incompetency.
(c) Inefficiency.
(d) Inexcusable neglect of duty.
(e) Insubordination.
(f) Dishonesty.
(g) Drunkeness on duty.
(h) Intemperance.
(i) Inexcusable absence without leave.
(k) Conviction of a felony or conviction of a misdemeanor involving moral turnitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.
(*l*) Immorality.

(m) Discourteous treatment of the public or other employees.
(n) Improper political activity.
(o) Willful disobedience.
(p) Misuse of state property.
(q) Violation of this part or broad rule.
(r) Violation of the prohibitions set forth in accordance with Section 19990.
(s) Refusal to take and subscribe any oath or affirmation which is required by law in connection with the employment.
(t) Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment.
(u) Any negligence, recklessness, or intentional act which results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled.
(v) The use during duty hours, for training or target practice, of any material which is not authorized therefor by the appointing power.
(w) Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age, against the public or other employees while acting in the capacity of a state employee.
(x) Unlawful retaliation against any other state officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of, the Attorney General, or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto.
(Added by Stats. 1945, c. 123, p. 567, § 1, amended by Stats. 1949, c. 1416, p. 2468, § 3; Stats. 1951, c. 862, p. 2374, § 12; Stats. 1961, c. 293, p. 1325, § 3; Stats. 1963, c. 1680, p. 3213, § 2; Stats. 1978, c. 69, p. 188, § 1; Stats. 1980, c. 718, § 1; Amended by Stats. 1981, c. 230, p. 1167, § 54; Amended by Stats. 1984, c. 1754, § 4)

Note—Stats 1984 Ch. 1754 provides:

SECTION 1. The Legislature finds and declares that it is the existing policy of the State of California to prohibit harassment and discrimination in employment on the basis of any protected classification. Such conduct whether intentional or unintentional is a violation of the civil rights of California citizenry and has been shown to decrease productivity in the workforce. It is the existing policy of the State of California, as declared by the Legislature, that procedures be established by which allegations of prohibited harassment and discrimination may be filed, timely and efficiently investigated, and fairly adjudicated, and that agencies and employers be required to establish affirmative programs which include prompt and remedial internal procedures and monitoring so that worksites will be maintained free from prohibited harassment and discrimination by their agents, administrators, and supervisors as well as by their nonsupervisors and clientele. To further this intent, the Legislature enacts this act.

CHAPTER 9. ACTIONS

19630. No action or proceeding shall be brought by any person having or claiming to have a cause of action or complaint or ground for issuance of any complaint or legal remedy for wrongs or grievances based on or related to any civil service law in this State or the administration thereof unless such action or proceeding is commenced and served within one year after such cause of action or complaint or ground for issuance of any writ or legal remedy first arose. Such a person shall not be compensated for the time subsequent to the date when such cause or ground arose unless such action or proceeding is filed and served within 90 days after such cause or ground arose. Where an appeal is taken from a decision of the board the cause of action does not arise until the final decision of the board.
(Amended by Stats. 19[illegible], Ch. 625 § 1.)

19631. The time for filing or commencing any such action or proceeding does not run during any time that the matter involved, including layoff appeals, is before the board pursuant to petition of the person involved, and final action has not been taken thereon by the board.

19632. Process directed to any officer or employee, or the board or its members, in any action or proceeding arising under this part may be served upon any member of the board, its secretary, or its assistant secretary, and also upon the Attorney General, or one of his deputies.

19635. No punitive action shall be valid against any state employee for any cause for discipline based on any civil service law of this State, unless notice of such punitive action is served within three years after the cause for discipline, upon which such notice is based, first arose. Punitive action based on fraud, embezzlement, or the falsification of records shall be valid, if notice of such action is served within three years after the discovery of such fraud, embezzlement, or falsification.
(Added by Stats. 1953, Ch. 1537 § 1.)

CHAPTER 10. PROHIBITIONS AND OFFENSES

19682. Every person who violates any provision of this chapter is guilty of a misdemeanor. Adverse action may be taken by the appointing power, or the executive officer of the board may file charges, against a state employee who violates any provisions of this chapter.
(Amended by Stats. 1984, Ch. 1754 § 5.)

19683. No state officer or employee nor any person whatsoever shall directly or indirectly use or threaten to use any official authority or influence in any manner whatsoever which tends to discourage, restrain, interfere with, coerce or discriminate against any other state officer or employee who in good faith reports, discloses, divulges, or otherwise brings to the attention of the Attorney General, or the Joint Legislative Audit Committee pursuant to Article 3 (commencing with Section 10540) of Chapter 4 of Part 2 of Division 2, or any other appropriate authority any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto. Any person guilty of such an act may be liable in an action for civil damages brought against him by the offended party. Notwithstanding the provisions of Section 19682, a violation of this section shall not be a misdemeanor. Adverse action may be taken against any state officer or employee found guilty of violating this section.
(Amended by Stats. 1984, Ch. 1212 § 7.)

19683.5 If a state employee is successful in an action brought pursuant to Section 19683, the complaining employee shall be reimbursed for all costs incurred pursuant to Section 995.3.
(Added by Stats. 1984, Ch. 1212 § 8.)

Article 2. Discrimination

19702. (a) A person shall not be discriminated against under this part because of sex, race, religious creed, color, national origin, ancestry, marital status, or physical handicap unless it can be shown that the particular handicap is job related. For purposes of this article, "discrimination" includes harassment. This subdivision is declaratory of existing law.
(b) As used in this section, "physical handicap" includes, but is not limited to, impairment of sight, hearing, or speech, or impairment of physical ability because of amputation or loss of function or coordination, or any other health impairment which requires special education or related services.
(c) As used in this section, "physical handicap" shall not include obesity or any other health impairment caused by such person's obesity.
(d) If the board finds that a person has engaged in discrimination under this part, and it appears that this practice consisted of acts described in Section 243.4, 261, 286, 288, 288a, or 289 of the Penal Code, the board, with the consent of the complainant, shall provide the local district attorney's office with a copy of its decision and order.
(e) If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on

the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take such action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(f) Any person claiming discrimination within the State Civil Service may submit a complaint which shall be in writing and set forth the particulars of the alleged discrimination, the name of the appointing authority, the persons alleged to have committed the unlawful discrimination and any other information that may be required by the Board. The complaint shall be filed with the appointing authority or, in accordance with Board rules, with the Board itself.

(g) Complaints must be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this Section, except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in adverse actions or rejections on probation shall be filed in accordance with the provisions of Government Code Section 19575 and 19175.

(h) When employees of the appointing authority refuse or threaten to refuse to cooperate in the investigation of a complaint of discrimination, the appointing authority may seek assistance from the Board. The Board may provide for direct investigation or hearing of the complaint, the use of subpoenas or any other action which will affect the purposes of this Section.

***Note*—Stats 1984 ch 1754 provides:**

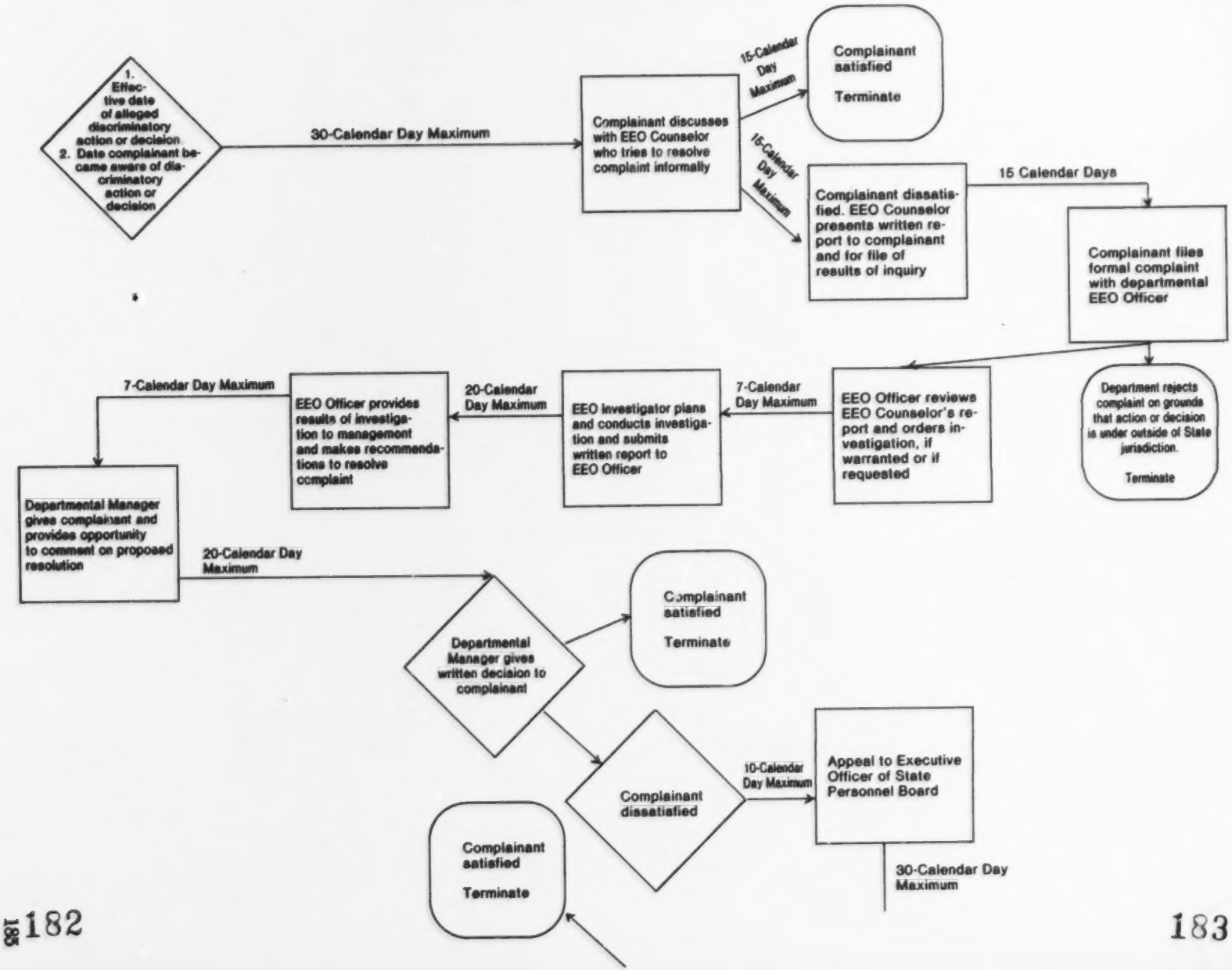
SECTION 1. The Legislature finds and declares that it is the existing policy of the State of California to prohibit harassment and discrimination in employment on the basis of any protected classification. Such conduct whether intentional or unintentional is a violation of the civil rights of California citizenry and has been shown to decrease productivity in the workforce. It is the existing policy of the State of California, as declared by the Legislature, that procedures be established by which allegations of prohibited harassment and discrimination may be filed, timely and efficiently investigated, and fairly adjudicated, and that agencies and employers be required to establish affirmative programs which include prompt and remedial internal procedures and monitoring so that worksites will be maintained free from prohibited harassment and discrimination by their agents, administrators, and supervisors as well as by their nonsupervisors and clientele. To further this intent, the Legislature enacts this act.

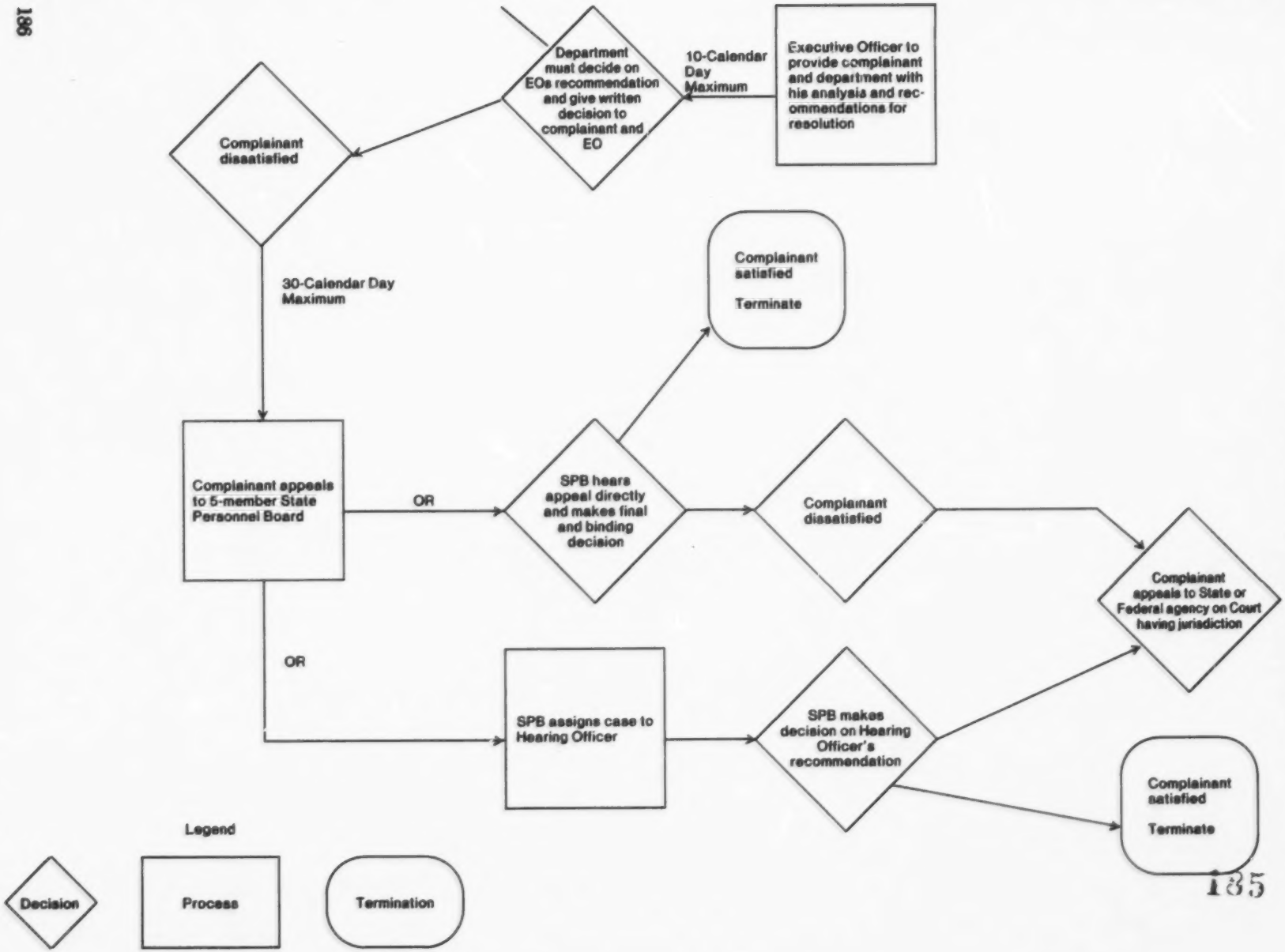
(Amended by Stats. 1984, Ch. 492 § 2, Ch. 1754 § 6; Amended by Stats. 1986, Ch. ____.)

19702.1. Hiring and promotion pursuant to this part shall conform to the Federal Civil Rights Act of 1964.

(Added by Stats. 1972, Ch. 915 § 1.)

STATE OF CALIFORNIA—EEO COMPLAINT PROCESS


1. Effective date of alleged discriminatory action or decision
2. Date complainant became aware of discriminatory action or decision
30-Calendar Day Maximum
Complainant discusses with EEO Counselor who tries to resolve complaint informally
15-Calendar Day Maximum
Complainant satisfied
Terminate
15-Calendar Day Maximum
Complainant dissatisfied. EEO Counselor presents written report to complainant and for file of results of inquiry
15 Calendar Days
Complainant files formal complaint with departmental EEO Officer
Department rejects complaint on grounds that action or decision is under outside of State jurisdiction.
Terminate
7-Calendar Day Maximum
EEO Officer reviews EEO Counselor's report and orders investigation, if warranted or if requested
20-Calendar Day Maximum
EEO investigator plans and conducts investigation and submits written report to EEO Officer
7-Calendar Day Maximum
EEO Officer provides results of investigation to management and makes recommendations to resolve complaint
20-Calendar Day Maximum
Departmental Manager gives complainant and provides opportunity to comment on proposed resolution
Departmental Manager gives written decision to complainant
Complainant satisfied
Terminate
Complainant dissatisfied
10-Calendar Day Maximum
Appeal to Executive Officer of State Personnel Board
30-Calendar Day Maximum
Complainant satisfied
Terminate


Executive Officer to provide complainant and department with his analysis and recommendations for resolution
10-Calendar Day Maximum
Department must decide on EOs recommendation and give written decision to complainant and EO
Complainant dissatisfied
30-Calendar Day Maximum
Complainant satisfied
Terminate
Complainant appeals to 5-member State Personnel Board
OR
SPB hears appeal directly and makes final and binding decision
Complainant dissatisfied
Complainant appeals to State or Federal agency on Court having jurisdiction
OR
SPB assigns case to Hearing Officer
SPB makes decision on Hearing Officer's recommendation
Complainant satisfied
Terminate
Legend
Decision
Process
Termination

Appendix P

COMPLAINT OF DISCRIMINATION

Case #_____

The Human Rights/Fair Housing Commission
of the City and County of Sacramento
2131 Capitol Avenue, Suite 206
Sacramento, CA 95814 Phone: 444-6903

PART A

Name: Susan B. Anthony Home Phone: (916) 001-4900 Work Phone: (916) 123-4567

Address: 926 J Street Zip: 95814

City: Sacramento County: Sacramento Occupation: Food service worker

Are you employed? Yes [X] No [ ] Monthly Income: $800.00 No. in Family: 1

What is Your Race? Black [ ] Caucasian [X] Asian/Pacific Islander [ ]
Native American [ ] Hispanic [ ] Other [ ]

What is Your Sex? Male [ ] Female [X]

PART B

1. Name person(s)/organization(s) whom you feel discriminated against you:

   a. Name: John Doe's Pizzeria (Chris F. R.) Position or Industry: Supervisor

   Address: 3200 H Street Zip: 95814 Phone: (916) 063-4251

   City: Sacramento County: Sacramento

   b. Name: _____ Position or Industry: _____

   Address: _____ Zip: _____ Phone: _____

   City: _____ County: _____

2. I was discriminated against in: Employment [X] Other [ ] specify:

   _____

3. If your charge is against a company or union, what was the number of employees or members? 20

4. I believe I was discriminated against because of my: (check one or more.)

   Race/Color [ ] Religious Creed [ ] National Origin [ ] Sex [X]

   Age [ ] Physical Handicap [ ] Other [ ] (Explain below):

   _____

   _____

5. Have you filed this complaint with any other agency? Yes [X] No [ ]

   If you answered "yes," with what agency did you file? D.F.E.H.

   What was the date you filed the complaint? July 15, 1934

6. Have you ever filed a complaint with this office before? Yes [ ] No [X]

(over)

7. Do you know any other individuals who feel they were discriminated against or who witnessed the alleged discrimination by the above person(s) and/or organization(s)? Yes ☐ No ☐

Name	Telephone Number
Elizabeth C. Stanton	916/001-3002

8. How would you like the Human Rights/Fair Housing Commission to assist you?

Counsel/advise my employer in order to end sexual harassment and reconsider my application for promotion.

9. Explain in detail how you feel you were discriminated against. (Include the most recent date that the alleged discrimination took place. You should attach any documents you believe will support your charge. (Copies will be made and the originals will be returned to you.)

Recently I applied for a management position with John Doe's Pizzeria restaurant chain. I felt that I had a good chance for the position having worked for John Doe's for almost 4 years and having all other requirements for the position.

On July 4, I was working the closing shift at John Doe's. Mr. E., my supervisor, dropped by (his day off). He said he had some questions to ask me about missing supplies. We went back to the store room and I really thought he was concerned about the supplies. However, he closed the door to the room after we entered. He then proceeded to ask me how badly I wanted the promotion. He said something to the effect: "I missed the fireworks display tonight; what do you say we make some of our own." He suggested that he could give me a great recommendation for the promotion if I treated him right. I slapped his face, left the store room and went right back to work. He left the building without speaking to me.

I did not get the promotion. Later I learned that Rubini had written a a very poor evaluation and submitted it to the personnel manager. Since this was taken into consideration in the selection of a new manager, I feel I was discriminated against because of refusing to comply with Rubini's demands.

PART C

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. I understand that the respondent will be notified of the charge.

Susan B. Anthony Complainant	10/3/84 Date
Associate	Date

Appendix Q

STATE OF CALIFORNIA — BOARD OF CONTROL

TORT CLAIM

GC-000 (6/77)

INSTRUCTIONS

a. CLAIMS RELATING TO CAUSES OF ACTION FOR DEATH OR FOR INJURY TO PERSON OR TO PERSONAL PROPERTY OR GROWING CROPS MUST BE PRESENTED NOT LATER THAN THE 100TH DAY AFTER THE ACCRUAL OF THE CAUSE OF ACTION. CLAIMS RELATING TO ANY OTHER CAUSE OF ACTION MUST BE PRESENTED NOT LATER THAN ONE YEAR AFTER THE ACCRUAL OF THE CAUSE OF ACTION. (SEC. 911.2, GOV. CODE)

b. CLAIMS MUST BE FILED WITH THE STATE BOARD OF CONTROL AT ITS OFFICE IN SUITE 300, 926 J STREET, SACRAMENTO, CALIFORNIA 95814.

c. CLAIM TO BE FILED IN TRIPLICATE.

RESERVE FOR FILING STAMP CLAIM NUMBER

BEFORE THE STATE BOARD OF CONTROL OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE CLAIM OF)
Susan B. Anthony)
AGAINST THE STATE OF CALIFORNIA)

THE UNDERSIGNED CLAIMANT HEREBY MAKES CLAIM AGAINST THE STATE OF CALIFORNIA IN THE SUM OF

$ 24,000 AND IN SUPPORT OF SAID CLAIM REPRESENTS AS FOLLOWS :

1. WHEN DID THE DAMAGE OR INJURY OCCUR (GIVE EXACT DATE AND HOUR)

January 1, 1985 - June 10, 1985 Continuing course of conduct

2. WHERE DID THE DAMAGE OR INJURY OCCUR (INCLUDE CITY AND COUNTY)

State Department of Public Works
Sacramento, CA 95814

3. HOW DID THE DAMAGE OR INJURY OCCUR (GIVE FULL DETAILS)

Sexual harassment by my supervisor over the five month period indicated above including constant pressuring for dates and intimate sexual contact, offensive touching. In addition, I was subjected to retaliation for saying no to sexual demands by receiving a poor performance rating after 2 years of above average ratings, and by being passed over for promotional consideration.

4. WHAT PARTICULAR ACT OR OMISSION ON THE PART OF STATE OFFICERS, SERVANTS OR EMPLOYEES CAUSED THE INJURY OR DAMAGE

Sexual harassment by supervisor in division of waste management. Retaliation for refusal to submit to sexual demands by supervisor who unfairly rated me below average and did not consider me for a promotion in spite of the fact I am highly qualified and eligible for consideration.

5. WHAT ARE THE NAMES OF THE STATE OFFICERS, SERVANTS OR EMPLOYEES CAUSING THE DAMAGE OR INJURY

John Doe, Supervisor
Jane Smith, Personnel Officer
Mike Jones, Deputy Director

(OVER)

6. WHAT DAMAGE OR INJURIES DO YOU CLAIM RESULTED (GIVE FULL EXTENT OF INJURIES OR DAMAGES CLAIMED) to date only

loss of promotional classification and pay $200/mo. = $1,000

out-of-pocket medical and counseling expenses for stress related illness $5,000

severe emotional distress $18,000 (includes prospective injury)

7. HOW WAS THE AMOUNT CLAIMED ABOVE COMPUTED (INCLUDE THE ESTIMATED AMOUNT OF ANY PROSPECTIVE INJURY OR DAMAGE)

back pay and out-of-pocket expenses = actual cost

severe emotional distress (including prospective injury) was computed by multiplying back pay and out-of-pocket expenses by a factor of 3.

NAMES AND ADDRESSES OF WITNESSES, DOCTORS AND HOSPITALS

EXPENDITURES MADE ON ACCOUNT OF ACCIDENT OR INJURY

DATE	ITEM	AMOUNT
2/3/85-5/20/85	Medical expenses	$ 2,100
3/17/85-5/29/85	Professional counseling	2,900

SEND NOTICES TO: (ATTORNEY)	GOVT. CODE SEC. 910.2 PROVIDES: "THE CLAIM SHALL BE SIGNED BY THE CLAIMANT OR BY SOME PERSON ON HIS BEHALF."
	CLAIMANT'S SIGNATURE
E. Candi Stanton, Attorney at Law	Susan B. Anthony
	ADDRESS
TELEPHONE NUMBER 916/001-4900	TELEPHONE NUMBER 916/001-3002

NOTICE

AFTER A CLAIM HAS BEEN FILED WITH THE BOARD IT WILL BE ASSIGNED A HEARING DATE, AND YOU WILL BE ADVISED OF THE TIME AND PLACE OF HEARING. AT PRESENT THE BOARD OF CONTROL MEETS ONLY IN SACRAMENTO AND LOS ANGELES. IF YOU WISH TO DESIGNATE ONE OF THESE LOCATIONS, PLEASE ADVISE US OF YOUR PREFERENCE WHEN YOU SUBMIT YOUR CLAIM. I prefer to have the hearing in Sacramento

SECTION 72 OF THE PENAL CODE PROVIDES:

"EVERY PERSON WHO, WITH INTENT TO DEFRAUD, PRESENTS FOR ALLOWANCE OR FOR PAYMENT TO ANY STATE BOARD OR OFFICER, OR TO ANY COUNTY, TOWN, CITY, DISTRICT, WARD OR VILLAGE BOARD OR OFFICER, AUTHORIZED TO ALLOW OR PAY THE SAME IF GENUINE, ANY FALSE OR FRAUDULENT CLAIM, BILL, ACCOUNT, VOUCHER, OR WRITING, IS GUILTY OF A FELONY."

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Appendix R

Assembly Bill No. 3883

CHAPTER 1058

An act to add Section 1256.7 to the Unemployment Insurance Code, relating to unemployment.

[Approved by Governor September 12, 1984. Filed with Secretary of State September 12, 1984.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3883, Molina. Unemployment: good cause: sexual harassment.

Existing law disqualifies an individual for unemployment compensation benefits if the individual is found to have left his or her most recent employment without good cause.

This bill would require that an individual be deemed to have left his or her employment with good cause if he or she left because of "sexual harassment," as defined. The individual would be required to take reasonable steps to preserve the working relationship unless the Director of Employment Develpment finds it would have been futile.

The people of the State of California do enact as follows:

SECTION 1. Section 1256.7 is added to the Unemployment Insurance Code, to read:

1256.7. An individual shall be deemed to have left his or her most recent work with good cause if the director finds that he or she leaves employment because of sexual harassment, provided the individual has taken reasonable steps to preserve the working relationship. No steps shall be required if the director finds it would have been futile. For purposes of this subdivision, unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature constitutes sexual harassment when any of the following occur:

(1) Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment.

(2) Submission to or rejection of the conduct by an individual is used as the basis for employment decisions affecting the individual.

(3) The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Findings of fact and law by the director shall not collaterally estop adjudication of the issue of sexual harassment in another forum.

(Added by Stats. 1984, c. 1058)

Appendix S

1 SOCIAL SECURITY ACCOUNT NUMBER: 001 | 10 | 0111
2 PRINT YOUR FIRST NAME: Susan INITIAL: B. LAST NAME: Anthony
3 YEAR OF BIRTH: 19 50
4 MALE ☐ FEMALE ☒
5 PRINT ADDRESS AT WHICH YOU RECEIVE YOUR MAIL: 926 J Street
CITY: Sacramento
ZIP CODE: 95814
6 ENTER A CHECK MARK IN THE APPROPRIATE BLOCK TO INDICATE WHY YOU ARE NO LONGER WORKING ON YOUR LAST JOB
☐ LAID OFF DUE TO LACK OF WORK (THIS INCLUDES TEMPORARY LAYOFF) ☐ DISCHARGED (FIRED) ☐ VOLUNTARY QUIT ☐ STRIKE OR LOCKOUT ☒ OTHER
7 LAST DATE YOU WORKED IN THAT JOB: July 13, 1984
8 EXPLAIN IN YOUR OWN WORDS THE REASON FOR LEAVING THAT JOB: Sexual harassment on the job made the work environment intolerable--headaches, stomach pains, insomnia. Supervisor harassment.

9 NAME AND MAILING ADDRESS OF YOUR VERY LAST EMPLOYER
EMPLOYER OR COMPANY: John Doe's Pizzeria
STREET OR BOX NO: 3200 H Street
CITY AND STATE: Sacramento, CA 95814
ZIP CODE

10 PRINT OTHER LAST NAMES AND SSA NOS YOU HAVE USED IN LAST TWO YRS

I HEREBY REGISTER FOR WORK AND CLAIM BENEFITS. I AM UNEMPLOYED OR WORKING PART TIME. I KNOW THE LAW REQUIRES TRUE AND COMPLETE ANSWERS.

CLAIMANT - DO NOT SIGN UNTIL ASKED TO DO SO
X

FOR DEPARTMENT USE ONLY
A ☐ CORRECTED NOTICE B ☐ TRANSITIONAL C IND ACT D OCC CODE E F ☐ G WAGE OVERLAP ☐ YES ☐ NO
H ☐ UI I ☐ UCFE J ☐ UCX
K (DATE)
L ☐ REGULAR ☐ FED ED ☐ CAL-ED ☐ W/S
M EFF DATE OF CLAIM
N OFFICE NO
O ☐ NEW PRIMARY ☐ ADDITIONAL
P ☐
INTERVIEWER

DE 1101A REV. 6 (5-83) UI CLAIM STATE OF CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT

11. In the past 19 months, did you —
- Serve in the armed forces? ..... YES ☐ NO ☒
- Work for an agency of the Federal Government? ..... YES ☐ NO ☒
- Work for an employer in another state? ..... YES ☐ NO ☒

12. Have you filed a claim or claimed benefits for unemployment insurance against California, another state or the Federal Government in the past 12 months? ..... YES ☐ NO ☒
13. Have you been a U.S. citizen for the past 19 months? ..... YES ☒ NO ☐
14. Are you a member of a union? (If yes, answer 14A, 14B, and 14C below.) ..... YES ☐ NO ☒
- 14A. Name of union _____
- 14B. Number of union _____
- 14C. Are you registered as out of work with your union? ..... YES ☐ NO ☐

(FO ISSUE DATE) (INT)

CLAIMANT'S CERTIFICATION

I have answered these questions for the purpose of obtaining Unemployment Insurance, knowing that the law provides penalties for making false statements.

Signature Susan B. Anthony Date July 15, 1984

DE 1101B REV 6 (5-83) UI CLAIM STATE OF CALIFORNIA – EMPLOYMENT DEVELOPMENT DEPARTMENT

USE PENCIL OR BALL-POINT PEN ONLY. PRESS HARD.

TO AVOID DELAY IN BENEFITS MAKE SURE SOCIAL SECURITY NUMBER IS CORRECT.

QUESTIONS NO. 1 TO NO. 14C MUST BE ANSWERED.

REMEMBER: YOU HAVE FILED YOUR CLAIM ONLY WHEN THIS FORM IS REVIEWED AND ACCEPTED BY THE DEPARTMENT.

RETURN COMPLETED FORM

ON _____ **AT** _____ **A.M. P.M.**

TO WINDOW _____

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— —		
ENTER YOUR SOCIAL SECURITY NUMBER	DATE ISSUED	

ANSWER ALL QUESTIONS BELOW

This information will allow us to provide better service to you by scheduling the appropriate interview for your next visit.

1. Have you received or do you expect to receive any payments from your last employer aside from your regular salary? ☐ YES ☒ NO
2. Are you physically able and willing to take a full-time job in your usual occupation? ☒ YES ☐ NO
3. Do you have a child-care problem or any other reason that would interfere with your accepting full-time work? ☐ YES ☒ NO
4. Are you self-employed or do you plan to become self-employed? ☐ YES ☒ NO
5. Do you own or rent or do you plan to own or rent your own farm or ranch? ☐ YES ☒ NO
6. Are you enrolled in or do you plan to enroll in school or a training course? ☐ YES ☒ NO
7. Is there any reason that would prevent you from accepting immediate work? ☐ YES ☒ NO

(OVER)

DE 8921 (11-81) Initial Claim Statement — State of California – Employment Development Department

PENSION QUESTIONNAIRE

Definition Of Pension For Unemployment Insurance Purposes

An allowance paid to an individual such as a governmental or other pension, retirement or retired pay, annuity, or any other similar payment which is based on the previous work of the individual. Examples of such work-related public or private pension or retirement payments would be Social Security benefits, military retired pay, union pension, etc.

Please check the appropriate box below:

a. ☐ I am receiving a pension. Source: _____

(If this block is checked, enter the gross amount you receive before deductions for income tax, health continuation plan, etc., on the appropriate line to the right.)

Weekly . . . . . $ _____
Biweekly . . . . . $ _____
Monthly . . . . . $ _____
Other Period: _____ (Specify) $ _____

b. ☐ I expect to become eligible for a pension on or about: _____ (Date)

(You may be liable to repay unemployment benefits received for the period covered by a retroactive pension payment.)

c. ☐ I am not entitled to any type of pension or retirement pay as defined above at this time or within the next 12 months.

I have answered these questions for the purpose of obtaining Unemployment Insurance, knowing that the law provides penalties for making false statements.

(OVER) Signature Susan B. Anthony Date July 15, 1984

IV. PRESENTING FACTS IN PERSON

The employer may arrange an in-person appearance to present oral or written facts for consideration in determining the claimant's eligibility. If you wish to appear in person, please call the field office shown below within 3 days of receipt of this notice for an appointment.

V. NEW FACTS OBTAINED BY EMPLOYER

If, in the future, you obtain facts which may affect the claimant's eligibility, you should submit such facts in writing within 10 days of the date you acquire the information.

VI. ELIGIBILITY DETERMINATION

It may be necessary to contact you by telephone or letter for eligibility information if an issue is identified by the field office. Regardless of whether such contact is made, however, unless you respond to the notice by mail or in person, as described above, you will not be entitled to a written notice of the Department's decision.

IMPORTANT

Section 1142 of the UI Code provides for the assessment of cash penalties against an employer who willfully makes a false statement or willfully fails to report a material fact regarding the termination of a claimant's employment.

Section 2101 of the UI Code provides that it is a misdemeanor to willfully make a false statement or knowingly fail to disclose a material fact to obtain, increase, reduce, or defeat any payment of benefits.

(FOLD HERE)

PLACE CORRECT POSTAGE HERE

(FOLD HERE)

(STAPLE OR TAPE TO MAIL)

Appendix T

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

WORKERS' COMPENSATION APPEALS BOARD

SEE REVERSE SIDE FOR INSTRUCTIONS

APPLICATION FOR ADJUDICATION OF CLAIM
(PRINT OR TYPE NAMES AND ADDRESSES)

CASE No. _____

Ms Susan B. Anthony — 926 J Street
(INJURED EMPLOYEE'S ADDRESS AND ZIP CODE)

Social Security No.: 001-10-0101 — Sacramento, CA 95814

(APPLICANT, IF OTHER THAN INJURED EMPLOYEE) — same
(APPLICANT'S ADDRESS AND ZIP CODE)

vs.
John Doe's Pizzeria
(EMPLOYER — STATE IF SELF-INSURED) — (EMPLOYER'S ADDRESS AND ZIP CODE)

(EMPLOYER'S INSURANCE CARRIER OR, IF SELF-INSURED, ADJUSTING AGENCY) — (INSURANCE CARRIER OR ADJUSTING AGENCY'S ADDRESS)

IT IS CLAIMED THAT:

1. The injured employee, born 7/15/50 (DATE OF BIRTH), while employed as a Food service worker (OCCUPATION AT TIME OF INJURY) on Oct. 1983-June 1984 (DATE OF INJURY) at 3200 H Street (ADDRESS) Sacramento (CITY) CA (STATE) 95814 (ZIP CODE)
   By the employer sustained injury arising out of and in the course of employment to
   emotional and psychological well being due to stress
   (STATE WHAT PARTS OF BODY WERE INJURED)
2. The injury occurred as follows: During period stated above, continuous deliberate sexual harassment
   (EXPLAIN WHAT EMPLOYEE WAS DOING AT TIME OF INJURY AND HOW INJURY WAS RECEIVED)
3. Actual earnings at time of injury were: $800/mo. 160 hrs./mo.
   (GIVE WEEKLY OR MONTHLY SALARY OR HOURLY RATE AND NUMBER OF HOURS WORKED PER WEEK)
   Tips - $30/wk.
   (SEPARATELY STATE VALUE PER WEEK OR MONTH OF TIPS, MEALS, LODGING OR OTHER ADVANTAGES REGULARLY RECEIVED)
4. The injury caused disability as follows: Last date worked was July 15, 1984; unable to work to date.
   (SPECIFY LAST DAY OFF WORK DUE TO THIS INJURY AND BEGINNING AND ENDING DATES OF ALL PERIODS OFF DUE TO THIS INJURY)
5. Compensation was paid ____ (YES) X (NO) $_____ (TOTAL PAID) $_____ (WEEKLY RATE) _____ (DATE OF LAST PAYMENT)
6. Unemployment insurance or unemployment compensation disability benefits have been received since the date of injury ____ (YES) X (NO)
7. Medical treatment was received X (YES) ____ (NO) September 4, 1984 (DATE OF LAST TREATMENT) All treatment was furnished by the Employer or Insurance Company ____ (YES) X (NO) Other treatment was provided or paid for by self
   (NAME OF PERSON OR AGENCY PROVIDING OR PAYING FOR MEDICAL CARE) Did Medi-Cal pay for any health care related to this claim ____ (YES) X (NO) doctors not provided or paid for by employer or insurance company who treated or examined for this injury are Sigfried Meud, 2828 Rivercity Boulevard, Sacramento
   (STATE NAMES AND ADDRESSES OF SUCH DOCTORS AND NAMES OF HOSPITALS TO WHICH SUCH DOCTORS ADMITTED INJURED)
8. Other cases have been filed for industrial injuries by this employee as follows: none
   (SPECIFY CASE NUMBER AND CITY WHERE FILED)
9. This application is filed because of a disagreement regarding liability for: Temporary disability indemnity X
   Permanent disability indemnity ____ Reimbursement for medical expense X Medical treatment ____
   Compensation at proper rate ____ Rehabilitation X Other (Specify) _____
   AND APPLICANT REQUESTS A HEARING AND AWARD OF
   THE SAME, AND FOR ALL OTHER APPROPRIATE BENEFITS PROVIDED BY LAW.

Dated at Sacramento (CITY), California, 12/9/84 (DATE)

_____ (APPLICANT'S ATTORNEY) — _____ (APPLICANT'S SIGNATURE)

_____ (ADDRESS AND TELEPHONE NUMBER OF ATTORNEY)

DIA WCAB Form 1 (Rev. 7/81)

INSTRUCTIONS

FILING AND SERVICE OF A DECLARATION OF READINESS (DIA/WCAB Form 9) IS PREREQUISITE TO THE SETTING OF A CASE FOR HEARING.

Effect of Filing Application

Filing of this application begins formal proceedings against the defendants named in your application.

Assistance in Filling Out Application

You may request the assistance of an information and assistance officer of the Division of Industrial Accidents.

Right to Attorney

You may be represented by an attorney or agent, or you may represent yourself. The attorney fee will be set by the Board at the time the case is decided and is ordinarily payable out of your award.

Filling Out Application

All blanks in the application shall be completed. Where the information is unknown, place "unknown" in the blank. If *medical treatment is paid for by Medi-Cal, Medicare, group health insurance or private carrier, please specify.*

Service of Documents

Your attorney or agent will serve all documents in accord with Labor Code Section 5501 and Section 10500 of the Workers' Compensation Appeals Board's Rules of Practice and Procedure.

If you have no attorney or agent, copies of this application will be served by the Workers' Compensation Appeals Board on all parties. If you file any other document, you must mail or deliver a copy of the document to all parties in the case.

IMPORTANT!

If any applicant is under 18 years of age, it will be necessary to file Petition for Appointment of Guardian ad Litem. Forms for this purpose may be obtained at the office of the Workers' Compensation Appeals Board.

Appendix U

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGIONAL OFFICE
1275 Market St. 14th floor
San Francisco, CA 94103

DISCRIMINATION COMPLAINT FORM

(This form is not required to file a complaint with OCR. However, the information requested in items 1-5 must be provided for all complaints, whether or not the form is used.)

1. Name of person filing this complaint:

NAME (Mr./Ms.) Anthony (Last) Susan (First) B. (Middle)

ADDRESS: 926 J Street

CITY AND STATE: Sacramento, CA 95814 (Zip Code)

PHONE NO.: 916 (Area Code) 324-4525 (Home)

916 (Area Code) 445-3173 (Work)

2. Name of person discriminated against (if other than person filing):

NAME (Mr./Ms.) N/A (Last) (First) (Middle)

ADDRESS: _____

CITY AND STATE: _____ (Zip Code)

PHONE NO.: _____ (Area Code) (Home)

_____ (Area Code) (Work)

3. OCR investigates discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education. Please identify the institution or agency that discriminated against you. If we cannot take your complaint, we will refer it to the appropriate agency.

NAME: State University

ADDRESS: 300 The American Way

CITY AND STATE: U.S.A. 00000 (Zip Code)

DEPT. or SCHOOL: Athletics

COMPLAINT FORM, PAGE 2

4. **The laws OCR enforces prohibit discrimination because of race, color, national origin, sex, handicap, or age. Please indicate whether this complaint concerns student services or employment (or both) and complete the appropriate category(ies) under basis:**

	BASIS (Check one or more and specify for each item checked.)
_X_ Student services	_____ Race/Color _____
	_____ National Origin _____
	_X_ Sex _____
	_____ Handicap _____
	_____ Age _____
____ Employment	_____ Race/Color _____
	_____ National Origin _____
	_____ Sex _____
	_____ Handicap _____
	_____ Age _____

5. **If you feel you were discriminated against on another basis for which OCR does not have jurisdiction (for example, religion) you may indicate it here and we will be glad to forward your complaint to the appropriate agency if we can.**

N/A

6. **What is the most recent date you were discriminated against?**

August 29, 1984

7. **If this date is more than 180 days ago, please explain why you waited until now to file your complaint.**

N/A

COMPLAINT FORM, PAGE 3

8. **When did the alleged discrimination begin?** August 29, 1984

9. **When and in what way did you first become aware that the treatment, act, or decision was discriminatory?**

August 29, 1984, when the coach, John Doe, propositioned me for a position on the rugby team.

10. **Have you tried to resolve your complaint with the institution through an internal grievance procedure?**

YES X **NO** _____

If you answered yes, please give us the name of the grievance procedure, and tell us the status of your complaint at this time.

But found that there was no established grievance procedure.

11. **The laws OCR enforces prohibit institutions receiving Department of Education funds from retaliating, harassing, or intimidating persons for taking action or participating in an action to secure rights protected by Title VI, Title IX, Section 504, or the Age Discrimination Act. If you feel that you have been harassed, intimidated, or retaliated against, please explain how and when this took place in your statement on the next page. Be sure to explain what action you took in your own behalf, or for someone else, to protect yourself or others from discrimination on the basis of race, color, national origin, sex, handicap, or age, and describe how and when the institution learned of your action.**

COMPLAINT FORM, PAGE 4

12. In your own words, describe what happened, when it happened, and who was responsible. (Attach additional pages if necessary.)

See #9

COMPLAINT FORM, PAGE 5

13. Please send copies of any written materials, data, or other documents which you think will help us understand your complaint.

14. If you have filed this complaint with any other Federal, State or local civil rights agency, or any Federal or State court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the other agency or court.

AGENCY OR COURT: None

DATE FILED: _____

RESULTS OF INVESTIGATION/FINDINGS BY AGENCY: _____

15. If you have not filed with another agency, do you intend to do so?

YES _____ NO X

NAME OF AGENCY: _____

ADDRESS: _____

CITY AND STATE: _____
(Zip Code)

COMPLAINT FORM, PAGE 6

16. Have you (or the person you are filing this complaint for) ever filed a complaint with OCR before?

YES _____ NO X

If yes, against what institution was (were) your complaint(s) filed?

Name of institution _____

Date _____ Docket number _____

Name of institution _____

Date _____ Docket number _____

17. While it is not necessary for you to know about money that the institution you are filing against receives from the Federal government, if you know of any Education Department funds received by the program or department in which the alleged discrimination occurred, please provide this information below.

_____

_____

_____

_____

18. We can not accept your complaint if it has not been signed. Please sign and date your complaint below.

9/1/84
(Date)

Susan B. Anthony
(Signature)

202

COMPLAINT FORM, PAGE 7

19. If we can not reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information is not required, but it will be helpful to us.

NAME Elizabeth C. Stanton

TELEPHONE NUMBERS: home (916) 001-4900 work (_____)_____

20. OCR has a procedure available which is quicker than an investigation. In this process, called Early Complaint Resolution (ECR), we attempt to help the complainant and the institution reach an agreement to settle the complaint. We do not use ECR if class issues are involved (if more than one individual is alleged to have been harmed). In addition, both the complainant and the institution must want to take part in the mediation. ECR is generally limited to approximately 25 days, and the complainant, the institution, or OCR may end the ECR process if it appears that an agreement can not be reached. If this happens, we will investigate the complaint. One of the primary benefits of this process is that it may be possible to resolve your complaint quickly, without the need for an investigation.

If OCR feels that mediation of your complaint is appropriate, are you interested in having OCR mediate your complaint?

YES X NO _____

If OCR determines ECR may be appropriate, we will contact you to discuss our ECR procedures in detail. If you requested this complaint form and we felt ECR may be appropriate based upon information you gave us, we may have attached ECR participation forms to this complaint form. If we did and you are interested in ECR, please sign and return the ECR and Privacy Act forms when you send us this complaint form.

Please sign below, return one copy to the Office for Civil Rights, and keep one copy for your records.

CONSENT FOR REVEALING COMPLAINANT'S IDENTITY TO INSTITUTION BEING INVESTIGATED

I have read the Notice on Investigatory Uses of Personal Information by the Office for Civil Rights. I understand that in the course of its investigation the Office for Civil Rights may find it necessary to reveal my identity to persons at the institution under investigation. I give my consent.

_____ (Name)

_____ (Date)

_____ (Complaint Docket Number)

Appendix V

[NOTE: Instructional information is in [ ](brackets); examples are in ( ) (parenthesis).]

INSTRUCTIONS FOR LAWSUITS TO PROHIBIT HARASSMENT

[You must send the defendant a copy of these instructions with service of documents.]

NOTE: These instructions cannot cover all of the problems and questions that may arise in a court case. If you do not know what to do to protect your rights, you should see an attorney.

INTRODUCTION

A new California law (Code Civ. Proc., § 527.6) permits a victim of harassment to obtain a court order ("injunction" or "temporary restraining order") against the person causing the harassment. The victim ("plaintiff") files a suit in Superior Court against the other person ("defendant"), and there is a court hearing within 15 days; the plaintiff can sometimes get a temporary court order against the defendant even before the hearing.

The law defines harassment as

> . . a knowing and wilful course of conduct directed at a specific person which seriously alarms, annoys or harasses such person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.
>
> "Course of Conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

The new procedure applies **only** to cases where the plaintiff suffers **substantial** emotional distress and where the defendant's conduct has no legitimate purpose and is not constitutionally protected. The law allows the court to require the losing party—whether the plaintiff or defendant—to pay the winning party his or her court costs and attorney's fees. And, to avoid duplication of other laws, the plaintiff cannot use the anti-harassment law where the dispute involves family violence or a debt collector collecting a debt.

The following forms are available for suing under the law and for opposing such suits:

1. **Petition for Injunction Prohibiting Harassment and Application for Temporary Restraining Order.** This form starts the lawsuit.
2. **Order to Show Cause and Temporary Restraining Order.** This form, when signed by the judge, tells the defendant to come to court for the hearing. It **may** include a temporary restraining order.
3. **Response to Petition for Injunction Prohibiting Harassment.** This form is for use by the defendant in opposing the lawsuit.
4. **Order After Hearing on Petition for Injunction Prohibiting Harassment.** This order may include orders for payment of attorney fees and court costs by the losing party.
5. **Proof of Service [Harassment].** This form, when completed and filed, assures the court the proper documents were properly served on the opposing party.

You may obtain these forms from the office of the County Clerk in most Superior Courts.

You have the right to file or defend the suit and to go to court with or without an attorney. You should seek the advice of an attorney, since any lawsuit may involve technical problems that cannot be explained in a printed form. Whether or not you have an attorney, the other party may have one.

If you choose not to have an attorney, study the following instructions before filling out the forms.

Alongside the heading of each form are the letters A through E to help you follow these instructions.

Item A. If you are not represented by an attorney your name, mailing address and phone number are typed in at the top of each form. If you do not want to disclose your home or work address or phone number, you may use an address or phone number where you will be able to receive any communications.

Item B. Fill in the name of the county where the action will be filed and the address of the Superior Court.

Items C. and D. Type the plaintiff's and the defendant's full name.

Item E. If this space has a checkbox (☐) it indicates part of the form is optional. Place an "X" in the box if you intend to use the optional part.

---

*You will need at least four copies of each form you use—an original to file with the court, a copy for yourself, a copy for each defendant, and one to use as a worksheet. All except your worksheet have to be typed. You need at least two copies of these instructions—one for each plaintiff and defendant.

INSTRUCTIONS FOR THE PLAINTIFF

A. **Filing the forms.** Obtain blank copies of the Petition for Injunction Prohibiting Harassment and the Order to Show Cause (Harassment). The original of each is to be filed with the court, and you will need one copy for each defendant plus one for each law enforcement agency you wish to receive a copy.

If you cannot afford to pay the fee for filing the papers, you may request that the court allow you to file **in forma pauperis** (without paying a fee).

If you are requesting a temporary restraining order the court will need all the details of the harassment and the problems it has caused you, and you must sign the "Verification" (Petition, item 16). You will probably want to attach additional pages to the petition to explain all the facts. If so, place an "X" in the box alongside item no. 9 of the Petition form.

In addition to these forms, you may file and serve affidavits signed by any persons who have personal knowledge of the defendant's conduct. If you do not know how to prepare an affidavit, you should consult an attorney.

Your papers will be presented to a judge who will decide whether the facts you have stated show that the defendant has engaged in harassment as defined by the law. Before reaching a decision, the judge may require that you notify the defendant that the petition has been filed.

B. **Service.** Arrange for the defendant to be personally served with copies of the petition and other papers as ordered by the court. Service may be made by a licensed process server, the sheriff's department, or any person over the age of 18 other than yourself. The person who serves the defendant must sign a Proof of Service form. File the original of the Proof of Service with the court.

C. **The hearing.** You must be present for the hearing. If there are any witnesses to the defendant's conduct or your emotional distress they should also be there. The Order After Hearing form should be completed and presented to the judge for signing. After it is signed, file the Order with the clerk and give the clerk the names of any law enforcement agencies you wish to receive copies of the Order. If the defendant was not present in court for the hearing, arrange to have defendant personally served with a copy of the Order.

INSTRUCTIONS FOR THE DEFENDANT

If you are served with an Order to Show Cause (Harassment) and a Petition for Injunction Prohibiting Harassment you should promptly seek legal advice. If you have no attorney, the attorney's reference service of your local bar association may be of assistance. Look under "attorneys" in the yellow pages of your telephone book.

If you choose not to consult an attorney, you should read these instructions, including the instructions for plaintiff, and:

1. Read the papers served on you very carefully. The Order to Show Cause tells you when to appear in court and may contain a Temporary Restraining Order forbidding you from doing certain things. **If you disobey the court's orders criminal charges may be filed against you.**

2. Obtain from the court clerk a blank form Response to Petition for Injunction Prohibiting Harassment. You may wish to complete this form and file it with the court.

   A copy of the response must be delivered to the plaintiff or plaintiff's attorney as soon as possible and no later than 48 hours before the hearing. NOTE: If the Petition is "verified" (see item 16 of the Petition) your Response should also be verified (see item 14 of the Response).

   In addition to the Response you may file and serve affidavits signed by persons who have personal knowledge of the facts. If you do not know how to prepare an affidavit, you should consult an attorney.

If you wish to oppose the lawsuit you should file a Response and also be present at the hearing. If you have any witnesses they must also be present.

If you wish to seek an injunction against the plaintiff, you must file a completed "Petition for Injunction Prohibiting Harassment."

[NOTE: Instructional information is in brackets [ ]; examples are in parenthesis ( ).]

A. ATTORNEY OR UNREPRESENTED PARTY (NAME AND ADDRESS) TELEPHONE NO
[Attorney name or victim name if appearing on own behalf]
Attorney at Law
[Street address, City], California [Zip code] [area code & #]
ATTORNEY FOR (Name): Plaintiff, [victim's name]

FOR COURT USE ONLY

B. SUPERIOR COURT OF CALIFORNIA, COUNTY OF [county] (Sacramento)
[Address of Court]
(720 Ninth Street, Sacramento, CA 95814)

C. PLAINTIFF [VICTIM'S NAME IN ALL CAPITAL LETTERS]

D. DEFENDANT [HARASSER'S FULL NAME IN ALL CAPITAL LETTERS]

E. PETITION FOR INJUNCTION PROHIBITING HARASSMENT
[X] APPLICATION FOR TEMPORARY RESTRAINING ORDER

CASE NUMBER
[court will give you a #]

1. This suit is filed in this county because a [ ] Defendant resides in this county. b [X] Defendant has caused physical injury to Plaintiff in this county. c. [ ] Other (Specify)

2. This suit is not filed under laws against domestic violence because
   a. [X] Plaintiff and Defendant are not married, are not living together, and have not lived together in the past.
   b. [ ] Although Plaintiff and Defendant are married or have lived together, Defendant's course of conduct has not included acts of violence which resulted in physical injury to Plaintiff.
   c. [ ] Other (Specify):

3. This suit is not brought under laws against unfair debt collection practices because
   a. [ ] Defendant does not claim Plaintiff owes a debt; b. [X] Defendant is not a debt collector; c. [ ] Other (Specify).

4 Defendant has done acts which seriously alarm, annoy, or harass Plaintiff as follows:
   a. Period or approximate date of acts Defendant, [NAME IN CAPS], has engaged in a continuing course of conduct directed at Plaintiff, [NAME IN CAPS], commencing (January 1, 1986) and continuing to the date of filing this petition. [If requesting a TRO, that is a temporary restraining order add:] The most recent acts occurred on [date]. [OR:] Acts occurred on (January 1, 1986, January 12, 1986, January 30, 1986, February 6, 1986, March 10, 1986, March 14, 1986, April 13, 1986, April 30, 1986, [etc.]).

   b. Acts (Specify): Plaintiff incorporates Attachment A by reference as though fully set forth herein.

5. Plaintiff has actually suffered substantial emotional distress as a direct result of defendant's conduct (Give details of the emotional distress): (as a direct result of the defendant's conduct, I have suffered severe emotional distress resulting in fear for my physical safety, nervousness, crying, inability to sleep, inability to leave my residence alone, and weight loss.)

6. Defendant's conduct would have caused a reasonable person to suffer substantial emotional distress.
7. Defendant's course of conduct has been directed specifically against Plaintiff and is knowing, wilful, not constitutionally protected and without legitimate purpose.

(Continued on reverse)

READ "INSTRUCTIONS FOR LAWSUITS TO PROHIBIT HARASSMENT" BEFORE FILLING OUT THIS FORM.

Form Approved by the Judicial Council of California Effective January 1, 1979

PETITION FOR INJUNCTION PROHIBITING HARASSMENT

CCP 527.6

8. ☐ PLAINTIFF REQUESTS A TEMPORARY RESTRAINING ORDER because Plaintiff will suffer great and irreparable injury before this Petition can be heard in court. That injury will be (Give details of injury and why it will occur before court hearing).
(I fear for my physical and emotional safety if defendant is not restrained prior to this hearing. The defendant's acts have prevented me from leaving my residence in the past two days. I am unable to attend classes at school because of defendant's conduct. I am fearful that the defendant will harm me physically once served with a copy of this petition.)

9. ☒ Additional pages are attached and incorporated as a part of this Petition to give further details concerning Defendant's conduct and Plaintiff's emotional distress. [NOTE: Check this box if you are also filing statements under penalty of perjury which are signed by witnesses (affidavits).]

10. Defendant lives at a. ☐ Unknown
b. ☒ (Specify): (Street address)
(City), CA (Zip Code)

11. Defendant works at: a. ☒ Unknown
b. ☐ (Specify):

12. PLAINTIFF REQUESTS THE FOLLOWING RELIEF FROM THE COURT:
a. ☒ A Temporary Restraining Order (Set forth terms on "Order to Show Cause (Harassment) and Temporary Restraining Order")
b. ☒ An injunction prohibiting harassment (Set forth terms on "Order to Show Cause (Harassment) and Temporary Restraining Order")
c ☒ Notice of the Court's order be given to the following law enforcement agencies (Specify):

Agency	Address
(Sacramento County Sheriff's Department	711 G Street, Sacramento, CA 95814)
(City of Sacramento Police Department	813 6th Street, Sacramento, CA 95814)

d. ☒ Reasonable attorney's fees
e. ☒ Court costs
f. Additional relief as may be proper

13. Date: (May 1, 1986)

14. [Victim signs here if not represented by counsel]
Signature of (Attorney for) Plaintiff

15. . . . . .
Print or type name

16. ☒ Verification (Optional—see instructions. Must be verified for Temporary Restraining Order.)
a. I know the facts in this Petition are true of my own knowledge, except as to those which are stated on information and belief, and as to those matters, I believe them to be true.
b ☒ I am the Plaintiff
c ☐ I am the attorney for Plaintiff and I make this declaration in the place of plaintiff because (Specify)

d. I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on (Date): (May 1, 1986) at (Place): (Sacramento, CA), California.

17. [Type victim's name here]
Type or Print Name

18. [Victim signs here]
Signature

The declaration under penalty of perjury must be signed in California, or in a state that authorizes use of a declaration in place of an affidavit; otherwise an affidavit is required.

4b. Acts: [Be as specific as possible. You must identify for the Court the types of conduct from which you are seeking protection. This will be the source of the terms of an injunctive order or a temporary restraining order (TRO). If insufficient space is available on the form itself, use a separate sheet of paper and entitle it "Exhibit A." Type in the space provided on the form the following sentence: "Plaintiff incorporates Exhibit A by reference as though fully set forth herein."]

(EXHIBIT A

During the period of time specified above, defendant has telephoned me at my residence and my place of employment at all hours of the day and night and as often as ten (10) times each day; has mailed, delivered letters, cards, and other written materials to my home and place of employment; has followed me to and from school on a daily basis from [date] to [date]; has placed objects, including notes, flowers, pictures and magazine articles, on, and under my vehicle, has parked and sat in his vehicle on the street in front of my residence for an hour or more on a daily basis in the past seven (7) days; has followed me on foot between classes on numerous occasions; and has engaged in other conduct and activities that have caused me to suffer severe emotional distress.)

A.	ATTORNEY OR UNREPRESENTED PARTY (NAME AND ADDRESS) TELEPHONE NO [Insert the same information here as you put on the Petition] ATTORNEY FOR (Name):	FOR COURT USE ONLY
B.	SUPERIOR COURT OF CALIFORNIA, COUNTY OF [same]	
C.	PLAINTIFF:	
D.	DEFENDANT: [same]	
E.	ORDER TO SHOW CAUSE (HARASSMENT) ☐ AND TEMPORARY RESTRAINING ORDER	CASE NUMBER [same]

1 TO (List name of each defendant):
Defendant, [FULL NAME OF DEFENDANT IN ALL CAPITAL LETTERS]

2. YOU ARE ORDERED to appear at a hearing in this court

[Court clerk will fill in.]

a. On (date): . . . . . b. at (time): . . . . .
c. In (room, department, division): . . . . .

d. Located at (address):
(720 Ninth Street
Sacramento, CA 95814)

and to give any legal reason why there should not be issued against you an Injunction Prohibiting Harassment, and such other relief as the Court may order.

3. ☒ TEMPORARY RESTRAINING ORDER

a. Pending the hearing, the Court further ORDERS THAT (Name): [HARASSER'S NAME IN CAPS] Defendant, is prohibited from alarming, annoying, or harassing (Name): [VICTIM'S NAME IN CAPS] Plaintiff, and SPECIFICALLY ORDERS THAT DEFENDANT:

(a) ☒ Refrain from threatening, striking, or making physical contact with Plaintiff.

(b) ☒ Remain at least 100 yards away from the following locations: (plaintiff's residence, plaintiff's place of employment, and educational facility. [If defendant already knows addresses of each of these, you may include the addresses.]

(c) ☒ Refrain from keeping Plaintiff under surveillance.

(d) ☒ Refrain from following Plaintiff.

(e) ☒ Remain at least 100 yards away from the following persons (Specify): [VICTIM'S NAME]

(f) ☒ Refrain from contacting Plaintiff by telephone.

(g) ☒ Refrain from blocking Plaintiff's movements in public places or thoroughfares.

(THE TEMPORARY RESTRAINING ORDER IS CONTINUED ON THE REVERSE)

VIOLATION OF THIS TEMPORARY RESTRAINING ORDER IS A MISDEMEANOR

If you do not file a "Response to Petition for Injunction Prohibiting Harassment," or if you do not appear at the Court hearing, the Court may make further orders against you

Form Approved by the Judicial Council of California Effective January 1, 1979

ORDER TO SHOW CAUSE (HARASSMENT) AND TEMPORARY RESTRAINING ORDER

CCP 527.6

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3. [X] (Temporary Restraining Order—Continued from other side):
(h) Other (Specify): (Defendant is specifically ordered to:

(1) Refrain from delivering or causing to be delivered by mail or otherwise, any written materials, objects, or items of whatever nature to Plaintiff.

(2) Refrain from placing in, or about, or on Plaintiff's vehicle any objects, items or materials of whatever nature or any other vehicle used by Plaintiff.)

b. This order shall be enforced by all peace officers in the State of California.

c. [X] The Clerk of this Court shall transmit, by the close of business on this date, this Order to the following law enforcement agencies (Specify):

(Sacramento, Caounty Sheriff's Department)
(City of Sacramento Police Department)

d. This Order shall expire on (Date): [Date of hearing to be inserted by Judge or clerk]

4. The injunction has been sought by Plaintiff (Specify Name): [VICTIM'S NAME IN CAPS] . . . . . , and is based upon the Petition for Injunction Prohibiting Harassment.

5. The defendant shall be personally served with a copy of this Order to Show Cause, the Petition for Injunction Prohibiting Harassment, a blank Response to Petition for Harassment, and the Instructions for Lawsuits to Prohibit Harassment no later than (Date): [date will be completed by court.]

6. Date: . . . . . 7. . . . . Judge of the Superior Court

A	ATTORNEY OR UNREPRESENTED PARTY (NAME AND ADDRESS) TELEPHONE NO [same as Petition] ATTORNEY FOR (Name):	FOR COURT USE ONLY
B	SUPERIOR COURT OF CALIFORNIA, COUNTY OF [same]	
C	PLAINTIFF	
D	DEFENDANT [same]	
E	PROOF OF SERVICE (HARASSMENT)	CASE NUMBER [same]

1. I served a copy of the following documents:
   a. [X] Instructions for Lawsuits to Prohibit Harassment
      Petition for Injunction Prohibiting Harassment
      Order to Show Cause (Harassment) & Blank copy of Response to Petition for Injunction
   b. [X] AND Prohibiting Harassment.
      Temporary Restraining Order
      Application for Temporary Restraining Order
   c. [ ] Response to Petition for Injunction Prohibiting Harassment
   d. [ ] Injunction Prohibiting Harassment

2. Persons served (Name) [NAME OF DEFENDANT IN CAPS]

3. Delivery at
   (1) date: (April 30, 1986) (2) time (12:15p.m.)
   (3) address: [street address, City, CA]
   by personally delivering copies to the person served

4. At the time of service I was at least 18 years of age and not a party to this proceeding.

5. Fee for service $

6. Person serving:
   a. [X] Not a registered California process server.
   b. [ ] Registered California process server.
   c. [ ] Employee or independent contractor of a registered California process server.
   d. [ ] Exempt from registration under Business and Professions Code section 22350(b).
   e. [ ] California sheriff, marshal or constable.
   f. [ ] Name, address and telephone number, and if applicable, county of registration and number:

7. [X] I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on (Date): (May 1, 1986) at (Place) (Sacramento,) California.

8. [ ] *(For California sheriff, marshal or constable use only)
   I certify that the foregoing is true and correct and that this certificate is executed on (Date):
   at (Place): California.

9. [Type or print name of person who served papers] [Secure signature of person serving papers.]
   Type or Print Name — Signature

The declaration under penalty of perjury must be signed in California, or in a state that authorizes use of a declaration in place of an affidavit, otherwise an affidavit is required.

Form Approved by the Judicial Council of California Effective January 1, 1979

PROOF OF SERVICE (HARASSMENT)

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[TO BE COMPLETED AFTER YOUR HEARING]

A.	ATTORNEY OR UNREPRESENTED PARTY (NAME AND ADDRESS) TELEPHONE NO [same as Petition] ATTORNEY FOR (Name)	FOR COURT USE ONLY
B	SUPERIOR COURT OF CALIFORNIA, COUNTY OF [same]	
C	PLAINTIFF	
D	DEFENDANT [same]	
E	ORDER AFTER HEARING ON PETITION FOR INJUNCTION PROHIBITING HARASSMENT [To be completed after your hearing]	CASE NUMBER

1. This matter was heard in court as follows:

   a. Date . . . . . b. Department, division, or room: . . . . .

   c. Judge: . . . . .

2. The following persons were present in court (Specify names):

   a. [X] Plaintiff [VICTIM'S NAME IN CAPS] [ ] Plaintiff's Attorney

   b. [X] Defendant [DEFENDANT'S NAME IN CAPS] [ ] Defendant's Attorney

3. [X] IT IS HEREBY ORDERED THAT (Name): [DEFENDANT'S NAME] . Defendant

   is prohibited from alarming, annoying, or harassing (Name)[VICTIM'S NAME] . Plaintiff, and Defendant is specifically ordered to:

   a. [X] Refrain from threatening, striking, or making physical contact with Plaintiff.
   b. [X] Remain at least (100)yards away from the following locations:
      (Plaintiff's residence; plaintiff's place of employment; the educational facility Plaintiff attends)
   c. [X] Refrain from keeping Plaintiff under surveillance.
   d. [X] Refrain from following Plaintiff.
   e. [X] Remain at least (100)yards from the following persons (Specify): [VICTIM'S NAME]
   f. [X] Refrain from contacting Plaintiff by telephone.
   g. [X] Refrain from blocking Plaintiff's movements in public places or thoroughfares.

(THIS ORDER IS CONTINUED ON THE REVERSE)

VIOLATION OF THIS ORDER IS A MISDEMEANOR

(continued from other side)

3. IT IS HEREBY ORDERED THAT (Name): [DEFENDANT'S NAME] . . . . . , Defendant.
h. [X] Other orders (Specify):

((1) Defendant is specifically ordered to refrain from delivering or causing to be delivered by mail or otherwise, any written materials, objects or items of whatever nature to Plaintiff.

(2) Defendnat is specifically ordered to refrain from placing any objects items, or material of any nature, in or about, or on Plaintiff's vehicle or any other vehicle used by Plaintiff.)

i. This order shall be enforced by all peace officers in the State of California.

VIOLATION OF THIS ORDER IS A MISDEMEANOR

4. [X] The Clerk of this Court shall transmit, by the close of business on this date, copies of this Order to the following law enforcement agencies:

(Sacramento County Sheriff's Department)

(City of Sacramento Police Department)

5. [X] (Name of Party): [DEFENDANT'S NAME] . . . . . shall pay to (Name): [PLAINTIFF'S OR ATTORNEY'S NAME] . . . . . $ ($500.00) . . attorney's fees.
and $ ($114.00) . in court costs.

6. This Order, except for any award of attorney's fees and costs, shall expire at midnight on (Date): [court completes this]

7. This Order, including all attachments, has . (two (2)) pages.

8. Date: . . . . . 9.

Judge of the Superior Court

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A	ATTORNEY OR UNREPRESENTED PARTY (NAME AND ADDRESS) TELEPHONE NO [THIS FORM IS TO BE COMPLETED BY THE DEFENDANT. YOU MUST SEND THE DEFENDANT A BLANK COPY OF THIS FORM WHEN YOU SERVE THE INSTRUCTIONS, PETITION, AND TRO APPLICATION] ATTORNEY FOR (Name):	FOR COURT USE ONLY
B	**SUPERIOR COURT OF CALIFORNIA, COUNTY OF**	
C	PLAINTIFF	
D	DEFENDANT	
E	**RESPONSE TO PETITION FOR INJUNCTION PROHIBITING HARASSMENT**	CASE NUMBER

1. a. ☐ Defendant denies doing all of the acts alleged in paragraph 4 of the Petition.
   b. ☐ Defendant denies doing some of the acts alleged in paragraph 4 of the Petition (Specify the acts that you deny doing):

2. ☐ Defendant has done some or all of the acts alleged, but the actions are justified or excused for the following reason(s)
   a. ☐ Defendant's acts served a legitimate purpose (Give details):

   b. ☐ Defendant's acts were constitutionally protected (Give details):

   c. ☐ Other (Give details):

3. a. ☐ Plaintiff has not suffered substantial emotional distress (Explain):

   b. ☐ A reasonable person in Plaintiff's position would not have suffered substantial emotional distress (Explain):

4. ☐ Plaintiff's distress is not the result of Defendant's alleged acts (Explain):

5. ☐ Defendant's acts, if any, did not amount to a course of conduct knowingly and wilfully directed against Plaintiff (Explain):

6. ☐ Defendant has other defenses (Give details):

7. ☐ Defendant consents to entry of the following order(s) (Set forth in detail):

READ "INSTRUCTIONS FOR LAWSUITS TO PROHIBIT HARASSMENT" BEFORE FILLING OUT THIS FORM.

(Continued on Reverse)

Form Approved by the Judicial Council of California Effective January 1 1979

RESPONSE TO PETITION FOR INJUNCTION PROHIBITING HARASSMENT

CCP 527.6

8. ☐ Defendant has suffered the following damage due to the issuance of a Temporary Restraining Order without notice (Give details):

9. ☐ Additional pages are attached and incorporated as a part of the Response to give further details and reasons why an injunction should not be granted against Defendant.

10. Defendant requests the following relief against Plaintiff:

a. ☐ Reasonable attorney's fees
b. ☐ Court costs
c. ☐ Money damages for the harm suffered by Defendant by reason of the issuance of a Temporary Restraining Order without notice
d. Additional relief as may be proper.

11. Date: . . . . . 12. . . . . Signature of (Attorney for) Defendant

13. . . . . Type or print name

14. ☐ Verification (May be optional—see instructions)

a. I know the facts in this Response are true of my own knowledge, except as to those which are stated on information and belief, and as to those matters, I believe them to be true.
b. ☐ I am the Defendant.
c. ☐ I am the attorney for Defendant and I make this declaration in the place of Defendant because (Specify):

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on (Date): . . . . . , at (Place) . . . . . , California.

15. . . . . Type or Print Name 16. Signature

The declaration under penalty of perjury must be signed in California, or in a state that authorizes use of a declaration in place of an affidavit; otherwise an affidavit is required.

File the original of this form with the court and deliver a copy to the person whose name appears in Box A of the "Petition for Injunction Prohibiting Harassment."

Appendix W

SAMPLE ONLY

VENTURA COUNTY MUNICIPAL COURT
STATE OF CALIFORNIA

HALL OF JUSTICE ____ Department

THE PEOPLE OF THE STATE OF CALIFORNIA

PLAINTIFF

Vs.

JOHN DOE,

SVPD 880-3333 DEFENDANT.

No FY-11664

COMPLAINT

☒ FELONY

☐ MISDEMEANOR
(Sect. 17b P.C.)

COUNT I

Joseph E. Taylor, being first duly sworn, says that

JOHN DOE

committed the crime of violation of section 261(2) of the Penal Code,

a (felony), in [redacted]), on that on or about December 30, 1980,

in Ventura County, California, he did willfully and unlawfully have and accomplish an act of sexual intercourse with a person, to wit, Jane Doe, not his spouse, against said person's will by means of force and fear of immediate and unlawful bodily injury on said person and another.

COUNT II

Said complainant further accuses JOHN DOE of committing the crime of violation of section 261(2) of the Penal Code, a felony, in that on or about December 31, 1980, in Ventura County, California, he did willfully and unlawfully have and accomplish an act of sexual intercourse with a person, to wit, June Doe, not his spouse, against said person's will by means of force and fear of immediate and unlawful bodily injury on said person and another.

Bail recommended by

District Attorney

$ 30,000

JET:cb

Arr: 1/8/81 at 9 a.m. Div. 11

Date ____

Officer ____

Variation from ____ to ____ 197_

Subscribed and sworn to before me this 2nd day of January 19 81

Deputy District Attorney, Ventura County

3812 1016 (1/74)

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SAMPLE ONLY

VENTURA COUNTY MUNICIPAL COURT
STATE OF CALIFORNIA

DIVISION: 12

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

JOHN DOE, Defendant.

261(2) PC (2 cts.) 12/30/80

Court No. FV-11664
D.A. No. SC-80-113
R.B./DR. No. _____

CRIMINAL SUBPOENA
(Pen. C. § 1328)

THE PEOPLE OF THE STATE OF CALIFORNIA TO:

JANE DOE
Res: 1166 Leighton Avenue
Ojai, CA
Telephone: 888-2121

Bus: 444 South Fox Street
Oxnard, CA
Telephone: 362-1616

IMPORTANT!

Please contact our Victim/Witness Unit as soon as possible after receiving this subpoena. See below for toll free numbers. Ask for Extension 3886.
Monday thru Friday 8 AM - 5 PM

THANK YOU FOR YOUR COOPERATION

☒ YOU ARE COMMANDED to appear before the above-entitled court located at the Hall of Justice, 800 South Victoria Avenue, Ventura, California 93009, on January 10, 19 81, at 1:15 o'clock P. M., as a witness in the above-entitled action.

☐ YOU ARE FURTHER COMMANDED to appear in Division ____ of the said court on _____, 19 ___, at _____ o'clock ____ M., as a witness in a pretrial hearing in the above-entitled action.

☐ YOU ARE FURTHER COMMANDED to bring with you the following items when you appear on _____, 19 ___.

MICHAEL D. BRADBURY
District Attorney

Dated: January 2, 1981

By: _____
JOSEPH TAYLOR cb
Deputy District Attorney

NOTE: Failure to appear at the above time and place in obedience to this subpoena, or at another time agreed upon with a member of the District Attorney's office, may be punishable as a contempt of court and result in a warrant being issued for your arrest. WITNESS FEES: You may be eligible to receive witness fees and mileage. Ask the deputy district attorney on your case for further information.

From Ventura, Ojai and Oak View (805) 654-3886
From Simi, Thousand Oaks, Moorpark and Westlake (805) 379-2860
From Fillmore, Piru and Lockwood Valley (805) 524-2792
From Oxnard, Port Hueneme, Camarillo, Santa Paula and Saticoy (805) 654-3100

DA-52 (Rev. 8-80)

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SAMPLE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff

vs.

JOHN DOE, Defendant

No. CR-161612

INFORMATION
(Violation of Section 261[2] of the Penal Code)

COUNT I

The District Attorney of the County of Ventura hereby accuses JOHN DOE

of the crime of violation of Section 261(2) of the Penal Code

on that on or about December 30, 1980, in the County of Ventura, State of California,
he did willfully and unlawfully have and accomplish an act of sexual intercourse with a person, to wit, Jane Doe, not his spouse, against said person's will by means of force and fear of immediate and unlawful bodily injury on said person and another.

COUNT II

The said JOHN DOE is further accused by the District Attorney of the crime of violation of section 261(2) of the Penal Code in that on or about December 31, 1980, in the County of Ventura, State of California, he did willfully and unlawfully have and accomplish an act of sexual intercourse with a person, to wit, June Doe, not his spouse, against said person's will by means of force and fear of immediate and unlawful bodily injury on said person and another.

MICHAEL D. BRADBURY, District Attorney
County of Ventura, State of California

By _____ Deputy District Attorney
JOSEPH E. TAYLOR cb

DA-5 (Rev. 1/78)

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Appendix X

APPLICATION FOR CRIME VICTIM COMPENSATION INSTRUCTIONS

PLEASE READ THEM COMPLETELY BEFORE FILLING IN THE FORM

GENERAL — *Complete form with pen or type. Please do not write in the spaces marked "Board of Control Use". If you have any difficulty in completing this application, you can get assistance by calling your local county "Victim Center". Consult the government listings in your local telephone directory under (County Victim Services, Victim-Witness Assistance or contact your County District Attorney or Probation Department.*

You may qualify for an emergency award of up to $1,000 if you have a loss of your income or received emergency medical treatment. If you receive an emergency award, you may be required to repay all or part of the award if the Board later finds you are ineligible to receive all or part of that award. The application is to be filed within one year of the date of the incident. If not, include with the application form a statement telling when you heard about the victims program, from whom, and the reason why you did not file sooner.

When the application is completed, please turn it in to your local victim center or mail to the STATE BOARD OF CONTROL, P.O. BOX 3036, SACRAMENTO, CA 95812-3036.

SECTION 1A — APPLICANT and SECTION 1B — VICTIM INFORMATION

If you are the VICTIM and the APPLICANT, fill in Section 1A completely. In Section 1B you need only give us your BIRTH DATE and SOCIAL SECURITY NUMBER (SS#). Where it asks for the VICTIM'S NAME write "Same". If the victim is someone else, fill in both sections completely as indicated.

SECTION 1C — APPLICATION ON BEHALF OF CHILD

Complete this section if you are making application on behalf of a child (under age 18) who was (or is) dependent on the victim for support. Please use a separate line for each child. *If there are more children than the three lines will accommodate, list the additional ones in Section 7 — Additional Information and Comments).* Under "APPLICANT'S RELATIONSHIP TO CHILD" tell us whether you are the father, mother, grandparent, guardian *(if guardian, supply copy of Guardianship papers)*; under "CHILD'S RELATIONSHIP TO VICTIM" list us know if the child is a son, daughter, foster child.

SECTION 2 — CRIME INFORMATION

Please fill in this section as completely as possible. As indicated, give the exact DATE OF CRIME; a short description as to the TYPE OF CRIME (for example: murder, assault, rape, robbery, hit and run, driving under the influence, etc); CRIME REPORT NUMBER *(Note: Your claim will be processed more rapidly if you can attach a police report to your application. If you do not attach a copy of the report please try to provide us with the REPORT NUMBER and the REPORT DATE. This information will assist in getting the actual report from the law enforcement agency* — THE BOARD IS UNABLE TO PROCESS YOUR CLAIM WITHOUT A LAW ENFORCEMENT AGENCY REPORT!) It is equally important to provide the NAME (including the ADDRESS, CITY, STATE, AND ZIP) of the law enforcement agency involved in your case (for example: Police, Sheriff, Highway Patrol, Other).

If the VICTIM WAS INJURED or THREATENED WITH INJURY, so indicate. Space has been provided in this Section for you to indicate the loss of medically prescribed items like glasses, artificial limbs, wheelchair, and the like as a result of this crime. It's important that this loss also be a part of the police report. If necessary, request the officer handling your case to add that information; the officer may have to file a "Supplemental Report".

Finish Section 2 by giving us the exact LOCATION OF THE CRIME —include the STREET, CITY, COUNTY, STATE, ZIP CODE.

SECTION 3 — WAGE LOSS/LOSS OF SUPPORT

Do not fill in this section unless you are claiming loss of wages or support of others who rely on the victim or applicant. If either the Victim or the Applicant is unemployed at the time of the crime, write "Unemployed" under EMPLOYERS NAME.

If you are the VICTIM AND THE APPLICANT, you need only fill in the information for APPLICANT and then enter the word "Same" in the space provided for the VICTIM. If the VICTIM and the APPLICANT are different people, then complete both the Victim and Applicant portion. If either the Victim or Applicant is self employed, enter the word "Self" under EMPLOYER'S NAME. If self employed (or income is not reported on a W-2 form), you must attach copies of the last two years income tax (Federal or State) returns and your business profit and loss statements.

Please provide us with the dates that you or the victim was medically disabled as a result of the crime. Give the MONTH, DAY AND YEAR (FROM) your disability started and when it ended (TO). If still disabled enter the word "Present" under TO. Provide information in the space marked "# OF PERSONS WHO RELY ON APPLICANT/-VICTIM FOR SUPPORT"; this could be any number from zero, but we are only interested in those directly dependent on a continuous basis. The number entered here must be the same as that claimed on your income tax return (Federal and State).

Please provide in the space indicated the NAME, ADDRESS, AND TELEPHONE of the DOCTOR who can state that the applicant/victim was unable to work due to injuries suffered from the crime. The box marked "DISABILITY PERIOD GIVEN" must be the dates authorized by the doctor that you list.

Please note: It is not necessary to attach any wage statements to the application, provided you give correct and complete information as your employer. The Board of Control or its agent will contact the employer.

Do not forgot to answer the YES and NO questions at the very bottom of Section 3 relative to Applicant/Victim employment benefits.

SECTION 4 — MEDICAL AND/OR FUNERAL EXPENSES

In addition to the information required in this Section, you must attach copies of all bills, receipts, and vouchers (paid or unpaid) for the expenses that you are claiming. You must also submit these same bills to your Insurance Company, to Medi-Cal or Medicare. This is required by law for both the Victim and/or Applicant.

In the column marked "SERVICE PROVIDER" give us the name of the Hospital, Doctor, Counselor, Funeral Home, including their Street Address, City, State, Zip, and Telephone. Under the heading "DATE SERVICE BEGAN/ENDED" give the first date of treatment and the last treatment date (example 3/1/86 - 3/31/86). If you are still receiving service, you need only give us the starting date.

The next column "AMOUNT BILLED", enter the amount of the bill. Show the amount that you have paid under the heading "AMOUNT PAID BY APPLICANT". If insurance of some type has paid a portion of the bill, give us that amount under the heading "AMOUNT PAID BY INSURANCE" including the Name, Address, and Policy/Group Number for the company named in the space marked "INSURANCE OR OTHER SOURCES". If the bill has not been paid by anyone, write "Not Paid" in these two places.

If you wish payment made directly to the service provider in your behalf (when required by them before service will be performed) you must sign the Authorization To Obtain Information and Assignment of Benefits on the last page of this application. In addition, the Board of Control cannot process your application without your signature on this same form. We urge you to sign and avoid delays!

If you expect to receive more bills mark the "YES" box at the bottom of the page, if not mark the "NO" box.

SECTION 5 — DEATH BENEFITS

Complete this section only if the victim has died.

SECTION 6 — CIVIL SUIT

The Board must be informed if you have sued or intend to sue any persons or organizations connected with this crime. Please complete this section, answering the questions posed.

SECTION 7 — ADDITIONAL INFORMATION AND COMMENTS

This space is provided for you to give us any information that will assist in the speedy processing of your claim . . . *it's to your advantage to help us all that you can!*

SECTION 8 — AUTHORIZATION TO OBTAIN INFORMATION

This section must be filled out completely and signed and dated by you in order for the Board to process your claim. The law requires that you sign here.

SECTION 9 — AUTHORIZATION & ASSIGNMENT TO PAY BENEFITS TO PROVIDERS OF SERVICE

This section must be filled out completely, signed and dated if you wish the providers of medical or funeral/burial services to be paid directly for any losses the Board determines outstanding.

SECTION 10 — CLAIMANTS REPRESENTATIVE INFORMATION

This section is to be completed by your authorized representative, if other than the applicant, such as the Victim Center or attorney who is representing you in this application.

VERY IMPORTANT — SIGN YOUR APPLICATION, IF YOU DO NOT, WE CANNOT WORK ON IT AND WILL RETURN IT TO YOU . . . CAUSING AN UNNECESSARY DELAY!

YOU MAY KEEP THIS PAGE FOR YOUR RECORDS, IF YOU DO, WE SUGGEST THAT YOU ENTER THE FOLLOWING INFORMATION . . .

NAME (APPLICANT/VICTIM) Susan B. Anthony

DATE CLAIM FILED 7/3/86 WITH ☒ BOARD OF CONTROL, OR

WITH _____ PHONE ( ) _____

Name of Person/Organization Helping You

APPLICATION FOR CRIME VICTIM COMPENSATION — STATE OF CALIFORNIA
PLEASE PRINT (PEN) OR TYPE
Mail to: STATE BOARD OF CONTROL P. O. Box 3036 Sacramento, CA 95812-3036

RECEIVED

BOARD OF CONTROL ONLY

SECTION 1-A: APPLICANT INFORMATION

APPLICANT NAME	RELATIONSHIP TO VICTIM
Susan B. Anthony	same

STREET ADDRESS	(HOME) PHONE
1000 P Street	(916 123-2345

CITY. STATE. ZIP CODE	(WORK) PHONE
Sacramento, CA 95814	(916 222-2222

SECTION 1-B: VICTIM

VICTIM'S NAME	SS #
same	000 | 00 | 0000

STREET ADDRESS	DATE OF BIRTH Mo. Day Yr.
	12 / 35 / 1880

CITY. STATE. ZIP CODE	DECEASED?
	Yes ☐ No ☒

SECTION 1-C: APPLICATION FOR BENEFIT OF CHILD (Victim Age 18)

NAME	DATE OF BIRTH Mo. Day Yr.	APPLICANT'S RELATIONSHIP TO CHILD	CHILD'S RELATIONSHIP TO VICTIM
	/ /		
	/ /		
	/ /		

SECTION 2: CRIME

DATE OF CRIME Mo. Day Yr.	TYPE OF CRIME	CRIME REPORT NUMBER	DATE OF REPORT Mo. Day Yr.	LAW ENFORCEMENT AGENCY NOTIFIED	NAME (INCLUDE ADDRESS, CITY & STATE)
11 / 21 / 85	raped at work	85-43870	11/ 21 / 85	☒ POLICE ☐ HIGHWAY PATROL ☐ SHERIFF ☐ OTHER	Sacramento Police Department 400 F. Street Sacto

Victim Injured?	Victim Threatened with Injury?	As a result of the crime, did the victim lose, have damaged, or need medically required items such as prescription glasses, artificial limbs, a wheelchair? If yes, what?	LOCATION OF CRIME
Yes ☒ No ☐	Yes ☐ No ☒	glasses	STREET 929 J Street CITY Sacto COUNTY Sacto STATE CA ZIP 95814

SECTION 3: WAGE [illegible]

APPLICANT'S EMPLOYER'S NAME	GROSS SALARY	HR DY WK MO
John Doe Agency	$ 25.00	☐ ☐ ☐ ☐

STREET ADDRESS	HOURS WORKED	DA WK
929 J Street, Suite 2500		☐ ☐

CITY. STATE. ZIP	EMPLOYER'S PHONE
Sacto CA 95814	(916) 222-2222

How long were you medically disabled as a result of the crime/injuries?	FROM Mo. Day Yr.	TO Mo. Day Yr.	# of Persons Who Rely on Applicant for Support
	11/ 21/ 85	present	1

Name of APPLICANT'S DOCTOR who can verify reason for time off:	PHONE
Dr. General Practice	(916) 466-7890

DOCTOR'S STREET ADDRESS	DISABILITY PERIOD GIVEN FROM Mo. Day Yr.	TO Mo. Day Yr.
999 J. Street, Suite 1234		11/ 21/ 85 present

CITY. STATE. ZIP
Sacramento, CA 95814

VICTIM'S EMPLOYER'S NAME	GROSS SALARY	HR DY WK MO
same	$	☐ ☐ ☐ ☐

STREET ADDRESS	HOURS WORKED	DA WK
		☐ ☐

CITY. STATE. ZIP	EMPLOYER'S PHONE
	( )

How long was the victim medically disabled as a result of the crime/injuries?	FROM Mo. Day Yr.	TO Mo. Day Yr.	# of Persons Who Rely on Victim for Support
	/ /	/ /	

Name of VICTIM'S DOCTOR who can verify reason for time off:	PHONE
	( )

DOCTOR'S STREET ADDRESS	DISABILITY PERIOD GIVEN FROM Mo. Day Yr.	TO Mo. Day Yr.
	/ /	/ /

CITY. STATE. ZIP

Has APPLICANT applied for or does APPLICANT qualify for:
WORKER'S COMPENSATION? Applied: Yes ☒ No ☐ Qualifies: Yes ☐ No ☐
STATE DISABILITY (SDI)? Applied: Yes ☒ No ☐ Qualifies: Yes ☐ No ☐
OTHER EMPLOYMENT BENEFIT? Yes ☒ No ☐
If yes, what? employer's disability insurance policy

Has VICTIM applied for or does VICTIM qualify for:
WORKER'S COMPENSATION? Applied: Yes ☐ No ☐ Qualifies: Yes ☐ No ☐
STATE DISABILITY (SDI)? Applied: Yes ☐ No ☐ Qualifies: Yes ☐ No ☐
OTHER EMPLOYMENT BENEFIT? Yes ☐ No ☐
If yes, what?

BC-VOC-100 (NEW 5/88)

FILL IN BACK SIDE - SECTION 4

HELP YOURSELF: A Manual for Dealing With Sexual Harassment

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SECTION 4: MEDICAL AND/OR FUNERAL EXPENSES (PAID OR UNPAID) ATTACH ALL BILLS, RECEIPTS, VOUCHERS, ETC.

BOARD OF CONTROL USE	SERVICE PROVIDER	DATE SERVICE BEGAN—ENDED M/D/Y—M/D/Y	AMOUNT BILLED	AMOUNT PAID BY APPLICANT	AMOUNT PAID BY INS./OTHER	INSURANCE OR OTHER SOURCES
[ ] $	NAME: Dr. Optha Mologist	12/11/85-2/7/86	$ 1,234	$ 220	$ 652	NAME: Acme Insurance — POLICY/GROUP #: 23456001
[ ] $	ADDRESS: 23456 J. Street	—	$	$	$	ADDRESS: 12345 J. Street
[ ] $	CITY: Sacramento STATE: CA ZIP: 95888 TELEPHONE: (916) 234-5678	—	$	$	$	CITY: Sacramento STATE: CA ZIP: 95855 TELEPHONE: ( )
[ ] $	NAME: Dr. General Practice	11/21/85-6/2/86	$ 987	$ 219	$ 544	NAME: as above — POLICY/GROUP #:
[ ] $	ADDRESS: 999 J. Street, Suite 1234	—	$	$	$	ADDRESS:
[ ] $	CITY: Sacramento STATE: CA ZIP: 95814 TELEPHONE: (916) 466-7890	—	$	$	$	CITY: STATE: ZIP: TELEPHONE: ( )
[ ] $	NAME: Sacramento Community Hospital	11/21/85-11/26/85	$ 3,765	$ 438	$ 1,454	NAME: as above — POLICY/GROUP #:
[ ] $	ADDRESS: 6789 J Street	—	$	$	$	ADDRESS:
[ ] $	CITY: Sacramento STATE: CA ZIP: 95888 TELEPHONE: (916) 567-1234	—	$	$	$	CITY: STATE: ZIP: TELEPHONE: ( )
[ ] $	NAME: Dr. Dentist	12/2/85 6/2/86	$ 858	$ 414	$ 432	NAME: as above — POLICY/GROUP #:
[ ] $	ADDRESS: 4567 J. Street	—	$	$	$	ADDRESS:
[ ] $	CITY: Sacramento STATE: CA ZIP: 95889 TELEPHONE: (916) 345-6789	—	$	$	$	CITY: STATE: ZIP: TELEPHONE: ( )
[ ] $	NAME: Dr. Psycho Therapist	11/26/85-present	$ 2,340	$ 750	$ 460	NAME: as above — POLICY/GROUP #:
[ ] $	ADDRESS: 3458 J. Street	—	$	$	$	ADDRESS:
[ ] $	CITY: Sacramento STATE: CA ZIP: 95818 TELEPHONE: (916) 123-4567	—	$	$	$	CITY: STATE: ZIP: TELEPHONE: ( )

ARE MORE BILLS DUE? YES ☒ NO ☐

$		BOARD OF CONTROL USE	$	$	$

FILL IN NEXT PAGE - SECTION 5

NAME OF PROVIDER | POLICY NUMBER | PHONE NUMBER ( )

ADDRESS STREET CITY STATE ZIP CODE

INHERITANCE: NAME OF EXECUTOR | NAMES OF BENEFICIARIES

ADDRESS OF EXECUTOR STREET CITY STATE ZIP CODE

AMOUNTS RECEIVED AS A RESULT OF INCIDENT

SOCIAL SECURITY $ _____ VETERANS ADMINISTRATION $ _____

HAVE YOU SUED THE PERSON WHO COMMITTED THE CRIME? ☐ YES ☒ NO
IF SO, YOU MUST NOTIFY THE BOARD.

IF NO, DO YOU INTEND TO SUE? ☒ YES ☐ NO

ATTORNEY HANDLING CIVIL SUIT OR ANY RELATED MATTER
NAME: Ima Lawyer NAME OF FIRM: Law Offices of Ima Lawyer PHONE NUMBER: (916) 230-2340
ADDRESS: 93425 J Street STREET: Sacramento, CA 95888 CITY STATE ZIP CODE

VICTIM/WITNESS OR BOARD USE ONLY

FUNERAL NET LOSS $ _____
MEDICAL NET LOSS _____
PSYCHOLOGICAL NET LOSS _____
WAGE NET LOSS _____
OTHER _____
CLAIM TOTAL _____

APPLICANT'S NAME (PRINT)	MEDI-CAL NO.	VICTIM'S NAME(S) (PRINT)	MEDI-CAL NO.
Susan B. Anthony	MEDICARE NO.	same	MEDICARE NO.

Pursuant to Section 13959 et seq., California Government Code — Aid to Victims of Crimes.

I HEREBY VOLUNTARILY CONSENT AND AUTHORIZE the State Board of Control, or their representatives, to examine this application and all employment, funeral/burial, or medical records, including diagnosis, prognosis, or evaluations, necessary for the verification of those losses claimed; and records of all sources of recovery pertaining to losses claimed, including but not limited to governmental or private unemployment and disability insurance, donations, Social Security benefits, Veterans Administration benefits, and governmental or private health or hospital/medical insurance benefits.

I further authorize the examination of all Federal and State tax data and/or tax returns which I provide for income verification purposes, and waive all legal privileges pertaining to such as would otherwise apply.

I understand this authorization is granted for a period of one year, for the purpose of pursuing a claim under the Victims of Crime Program, pursuant to California Government Code Section 13959 et seq. I further authorize the use of a photo copy of this release, as being as valid as the original.

Susan B Anthony
Applicant Signature

7/3/86
Date Signed

[redacted]

APPLICANT'S NAME (PRINT)	VICTIM'S NAME(S) (PRINT)

I hereby authorize and assign payment directly to any medical and/or funeral/burial provider of services described within this claim, should reimbursement or payment of these service be approved by the State Board of Control.

The execution of the assignment of benefits does not guarantee payment by the State Board of Control to the applicant or the provider of services.

Susan B Anthony
Applicant Signature

7/3/86
Date Signed

SECTION 10 — CLAIMANT'S REPRESENTATIVE INFORMATION

NAME	NAME OF FIRM OR ORGANIZATION	PHONE NUMBER
Ima Lawyer	Law Offices of Ima S. Lawyer	(916) 230-2340

ADDRESS STREET	CITY	STATE	ZIP CODE
93425 J. Street	Sacramento, CA	95888	

BC-VOC-100 (NEW 9/88)

Senate Bill No. 1057

CHAPTER 1328

An act to add Section 2036.1 to the Code of Civil Procedure, to add Sections 783 and 1106 to the Evidence Code, and to amend Sections 11507.6 and 11513 of the Government Code, relating to evidence.

[Approved by Governor September 30, 1985. Filed with Secretary of State October 1, 1985.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1057, Lockyer. Evidence.

Existing law prescribes the showing required when a party is required to show "good cause" to obtain discovery, as specified.

This bill would require "good cause" to be shown to obtain discovery regarding the plaintiff's sexual conduct in cases relating to sexual harassment, sexual assault, or sexual battery.

Existing law prescribes a procedure for determining the admissibility in certain criminal cases of evidence of sexual conduct of the complaining witness to attack credibility.

This bill would prescribe a similar procedure for civil actions relating to sexual harassment, sexual assault, or sexual battery, as to evidence of sexual conduct of the plaintiff.

Existing law prohibits the use of certain evidence of a complaining witness' sexual conduct in certain criminal cases to prove consent.

This bill would prohibit the use of that kind of evidence to prove consent by the plaintiff in a civil action relating to sexual harassment, sexual assault, or sexual battery.

Existing law prescribes exclusive procedures for discovery and taking of evidence as to adjudicatory hearings conducted by state agencies.

This bill would establish criteria for the discovery and taking of evidence of a complainant's sexual conduct in those hearings which relate to sexual harassment, sexual assault, or sexual battery.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that it is the existing policy of the State of California to ensure that the causes of action for claims of sexual harassment, sexual assault, or sexual battery are given proper meaning. The discovery of sexual aspects of complainant's lives, as well as those of their past and current friends and acquaintances, has the clear potential to discourage complaints and to annoy and harass litigants. That annoyance and discomfort, as a result of defendant or respondent inquiries, is unnecessary and deplorable. Without protection against it, individuals whose intimate lives are unjustifiably and offensively intruded upon might face the "Catch-22" of invoking their remedy only at the risk of enduring further intrusions into details of their personal lives in discovery, and in open quasi-judicial or judicial proceedings.

The Legislature is mindful that a similar state of affairs once confronted victims in criminal prosecutions for rape, who often ran the risk of finding their own moral characters on trial during the prosecution of their assailants. The Legislature has taken measures to curb those abuses in rape proceedings. It is the intent of the Legislature to take similar measures in sexual harassment, sexual assault, or sexual battery cases.

The Legislature concludes that the use of evidence of a complainant's sexual behavior is more often harassing and intimidating than genuinely probative, and the potential for prejudice outweighs whatever probative value that evidence may have. Absent extraordinary circumstances, inquiry into those areas should not be permited, either in discovery or at trial.

SEC. 2. Section 2036.1 is added to the Code of Civil Procedure, to read:

2036.1. In any civil action alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, a party is required to show "good cause" in accordance with Section 2036 to obtain discovery regarding the plaintiff's sexual conduct with individuals other than the alleged perpetrator. That showing shall be made by noticed motion and shall not be made or considered by the court at an ex parte hearing.

SEC. 3. Section 783 is added to the Evidence Code, to read:

783. In any civil action alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, if evidence of sexual conduct of the plaintiff is offered to attack credibility of the plaintiff under Section 780, the following procedures shall be followed:

(a) A written motion shall be made by the defendant to the court and the plaintiff's attorney stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the plaintiff proposed to be presented.

(b) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated.

(c) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at the hearing allow the questioning of the plaintiff regarding the offer of proof made by the defendant.

(d) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the plaintiff is relevant pursuant to Section 780, and is not inadmissible pursuant to Section 352, the court may make an order stating what evidence may be intro-

duced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

SEC. 4. Section 1106 is added to the Evidence Code, to read:

1106. (a) In any civil action alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, opinion evidence, reputation evidence, and evidence of specific instances of plaintiff's sexual conduct, or any of such evidence, is not admissible by the defendant in order to prove consent by the plaintiff or the absence of injury to the plaintiff, unless the injury alleged by the plaintiff is in the nature of loss of consortium.

(b) Subdivision (a) shall not be applicable to evidence of the plaintiff's sexual conduct with the alleged perpetrator.

(c) If the plaintiff introduces evidence, including testimony of a witness, or the plaintiff as a witness gives testimony, and the evidence or testimony relates to the plaintiff's sexual conduct, the defendant may cross-examine the witness who gives the testimony and offer relevant evidence limited specifically to the rebuttal of the evidence introduced by the plaintiff or given by the plaintiff.

(d) Nothing in this section shall be construed to make inadmissible any evidence offered to attack the credibility of the plaintiff as provided in Section 783.

SEC. 5. Section 11507.6 of the Government Code is amended to read:

11507.6. After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after such service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to such person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that such reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of such oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

(g) In any proceeding under subdivision (i) or (j) of Section 12940, or Section 19572 or 19702, alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is not discoverable unless it is to be offered at a hearing to attack the credibility of the complainant as provided for under subdivision (j) of Section 11513. This subdivision is intended only to limit the scope of discovery; it is not intended to affect the methods of discovery allowed under this section.

SEC. 6. Section 11513 of the Government Code is amended to read:

11513. (a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses, to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence

on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

In any proceeding under subdivision (i) or (j) of Section 12940, or Section 19572 or 19702, alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is not admissible at hearing unless offered to attack the credibility of the complainant, as provided for under subdivision (j). Reputation or opinion evidence regarding the sexual behavior of the complainant is not admissible for any purpose.

(d) The hearing shall be conducted in the English language, except that a party who does not proficiently speak or understand the English language and who requests language assistance shall be provided an interpreter approved by the administrative law judge or hearing officer conducting the proceedings. The cost of providing the interpreter shall be paid by the agency having jurisdiction over the matter if the administrative law judge or hearing officer so directs, otherwise the party for whom the interpreter is provided.

The administrative law judge's or hearing officer's decision to direct payment shall be based upon an equitable consideration of all the circumstances in each case, such as the ability of the party in need of the interpreter to pay, except with respect to hearings before the Workers' Compensation Appeals Board or the Division of Industrial Accidents relating to worker's compensation claims. With respect to these hearings, the payment of the costs of providing an interpreter shall be governed by the rules and regulations promulgated by the Workers' Compensation Appeals Board or the Administrative Director of the Division of Industrial Accidents, as appropriate. Such an interpreter shall be selected pursuant to regulations issued by both of the following:

(1) The State Personnel Board which shall establish criteria for an interpreter's proficiency in both English and the language in which the person will testify.

(2) The employing agency which shall establish materials and examinations for an interpreter's understanding of its technical program terminology and procedures.

(e) The State Personnel Board shall compile and publish a list of interpreters it has determined to be proficient in various languages and any interpreter so listed shall be eligible to be examined by each employing agency relating to its technical program terminology and procedures. Any interpreter whose language proficiency and knowledge of the terminology and procedures has been satisfactorily determined by the employing agency shall be deemed to be approved by an administrative law judge or a hearing officer of the agency.

(f) In the event that interpreters on the approved list cannot be present at the hearing, or if there is no interpreter on the approved list for a particular language, the hearing agency shall have discretionary authority to provisionally qualify and utilize other interpreters.

(g) Every state agency affected by this section shall advise each party of their right to an interpreter at the same time that each party is advised of the hearing date. Each party in need of an interpreter shall also be encouraged to give timely notice to the agency conducting the hearing so that appropriate arrangements can be made.

(h) The rules of confidentiality of the agency, if any, which may apply in an adjudicatory hearing, shall apply to any interpreter in the hearing, whether or not the rules so state.

(i) The interpreter shall not have had any involvement in the issues of the case prior to the hearing.

As used in subdivisions (d) and (e), the terms "administrative law judge" and "hearing officer" shall not be construed to require the use of an Office of Administrative Hearings' administrative law judge or hearing officer.

(j) Evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is presumed inadmissible absent an offer of proof establishing its relevance and reliability and that its probative value is not substantially outweighed by the probability that its admission will create substantial danger of undue prejudice or confuse the issue.

(k) For purposes of this section "complainant" means any person claiming to have been subjected to conduct which constitutes sexual harassment, sexual assault, or sexual battery.